No. 610.

Br. of Atty. Gen. (Brodie) Co

Appellant.

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

R. W. McCLAUGHRY, AS WARDEN OF THE United States Penitentiary at Fort Leavenworth, Kansas, appellant,
v.
PETER C. DEMING.
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

BRIEF ON BEHALF OF THE APPELLANT.

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STATEMENT OF THE CASE.

This is an appeal by the warden of the penitentiary at Fort Leavenworth, Kans., from an order of the circuit court of the United States for that district, entered February 27, 1902, directing the discharge of Peter C. Deming, on the petition of John Atwood for a writ of habeas corpus (Rec., p. 23).

On March 29, 1900 (Special Orders, No. 65), a general court-martial was appointed by William R. Shafter, major-general, United States Volunteer Army, and brigadier-general, United States Army, retired, to meet at San Francisco, Cal., to try Peter C. Deming,

the appellee herein, a captain in the subsistence department of the Volunteer Army of the United States. The court so convened was constituted entirely of Regular Army officers (Rec., p. 2). Thereafter, to wit, on April 5, 1900, the said court proceeded to the trial of said Deming; "the said Peter C. Deming, being present in court, the order convening the court was read to said Deming, and said Deming was then and there asked if he objected to being tried by any members present named therein, to which the said Deming replied in the negative" (Rec., p. 5).

Deming was charged with (1) "embezzlement of public money of the United States, in violation of the sixtieth article of war," under two specifications (Rec., p. 5); (2) "conduct unbecoming an officer and a gentleman, in violation of the sixty-first article of war," under two specifications (Rec., p. 6); (3) "forgery, to the prejudice of good order and military discipline, in violation of the sixty-second article of war," under two specifications (Rec., p. 7). Deming pleaded guilty to each of these charges and the specifications thereunder (Rec., p. 8), and was thereupon sentenced "to be dismissed from the service of the United States, to be confined in such penitentiary as the reviewing authority may direct for a period of three years, and that the crime, punishment, name, and place of abode of the accused shall be published in the newspapers in and about the city of San Francisco, Cal., and in the State where the accused usually resides" (Rec., p. 8). This sentence was approved by General Shafter on May 2, 1900, and confirmed by the President of the United

States on June 8, 1900 (Rec., p. 18). By direction of the Secretary of War Deming ceased to be an officer of the Army from June 12, 1900, and the penitentiary at Fort Leavenworth was designated as the place of his confinement under said sentence (Rec., p. 22).

Thereafter, on September 11, 1901, John H. Atwood, on behalf of Deming, filed a petition for a writ of *habeas corpus* in the circuit court of the United States for the district of Kansas, setting forth that Deming was then imprisoned and restrained of his liberty by the appellant herein; that the sentence of said court-martial, by virtue of which he was confined, was in direct violation of the seventy-seventh article of war (sec. 1342 R. S.), which provides that "officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces," etc.; and that consequently said Deming was "tried and convicted without due process of law and in violation of the fifth amendment to the Constitution of the United States." (Rec., p. 2.)

Although it is not so shown in the record it may not be improper here to say that, after hearing upon the writ of habeas corpus which was issued in accordance with the foregoing petition, the said writ was discharged, and that upon appeal to the circuit court of appeals that court reversed the order of the circuit court and directed that the writ issue, and that said Deming be discharged from custody. Thereafter, in accordance with the judgment of the circuit court of appeals, Deming was discharged, and from the order of the court so discharging him this appeal is taken. (Rec., p. 23.)

SYNOPSIS OF ARGUMENT.

In presenting the Government's side of the case we shall discuss the following propositions:

FIRST PROPOSITION.

That the Volunteer Army of 1899, of which petitioner was an officer at the time of his trial, conviction, and sentence, as above set forth, was not "other forces" within the meaning of article 77 of the Articles of War.

SECOND PROPOSITION.

That even if the petitioner were to be treated as an officer of "other forces" within the meaning of said article 77, that fact would not deprive the court-martial of regular officers which tried him of jurisdiction. This article relates entirely to the competency of members of a court-martial, not at all to its jurisdiction.

THIRD PROPOSITION.

The court-martial having jurisdiction and acting within its powers, its proceedings can not be assailed by habeas corpus.

ARGUMENT.

FIRST PROPOSITION.

That the Volunteer Army of 1899, of which petitioner was an officer at the time of his trial, conviction, and sentence, as above set forth, was not "other forces" within the meaning of article 77 of the Articles of War.

The contention is not that this Volunteer Army was one force with the Regular Army for all purposes, but that it was not "other forces" than the Regular Army within the meaning of an article of war that had to do

with the enforcement of discipline through trials by court-martial.

Whether or not this proposition is correct depends wholly upon the interpretation to be placed upon the words "other forces" as used in the seventy-seventh article of war.

The term "Army of the United States" as employed in legislation designates, in time of peace, the Regular Army only (sec. 1094, R. S.), and in time of war the Regular Army and Volunteer Army (act of April 22, 1898, sec. 2). In a broader sense the term includes also the militia when called into active service of the United States (Digest Op. J. A. G., p. 691), and likewise the Marine Corps when detached by order of the President for service with the Army (sec. 1619, R. S.; sec. 1342, R. S., art. 78). The four classes of troops which thus in the aggregate make up the Army of the United States in time of war are:

(1) The Regular Army.

(2) The Volunteer Army.

(3) The militia in active service of the United States.

(4) The Marine Corps when detached and placed upon duty with the Army by order of the President of the United States.

The seventy-seventh article of war provides as follows:

> ARTICLE 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers and soldiers of other forces, except as provided in article 78.

The application of the term "other forces" employed in this article must be to one or more of the three classes of troops last above mentioned; which of these are included within that designation can be answered only by a consideration of the characteristics of each.

REGULAR ARMY.

The Regular Army of the United States has its origin in the general authority conferred by the Constitution upon Congress, to raise and support armies and to make rules and regulations for their government (art. 1, sec. 8, clauses 12–14). Legislation was enacted by Congress as early as 1799, under the general authority here referred to, recognizing and adapting to the Constitution of the United States the establishment of the troops raised under the resolves of the Congress prior to the adoption of the Constitution. This legislation marked the beginning of the Regular Army of the United States, and such an army has ever since been maintained under permanent legislation. The term "Regular Army" means simply "standing army," or that military organization which it is the intention to maintain without regard to whether the country is at peace or at war. It is made up of men who engage *voluntarily and directly* with the United States to serve, not indirectly, through the agency of the States, as in the case of the militia. As a military organization, the Regular Army may be sent anywhere within or without our territorial bound, and may therefore be employed not only for the execution of the laws of the union, suppression of

insurrection, and the repelling of invasion, as in the case of the militia, but as well for invading foreign territory, occupying and governing the same, and for any of the manifold purposes for which a sovereign nation may employ an army under international law.

MILITIA.

The militia has its origin in those provisions of the Constitution which confer upon Congress the authority to provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasion, and for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. To the States is reserved the appointment of officers, and the authority to train the militia in the discipline prescribed by Congress (art. 1, sec. 8, clauses 15–16).

Under the authority of these provisions of the Constitution, Congress enacted the militia law of 1792, which prescribed the organization, drill, and discipline of the militia, and conferred upon the President the authority to call them into the service of the General Government in such numbers as he may determine. Under these constitutional provisions and laws the use of the militia by the General Government is restricted to a time of war or public danger, and to the accomplishment of three purposes: (1) The execution of the laws of the Union; (2) the suppression of insurrection; and (3) the repelling of invasion. The militia may therefore not be used, legally, outside our territorial limits for carrying on a war of invasion, but

is purely a domestic force; and under all circumstances, whether in the State service or in the service of the General Government, the militia retains the essential characteristics of State troops. When we consider the restricted use which may be made of the militia in active service of the United States, and that the authority for its maintenance is derived from a wholly separate and distinct provision of the Constitution from that under which the Regular Army is maintained, it seems very plain that the militia should be held to be "other forces" within the meaning of the seventy-seventh article of war.

MARINE CORPS.

This corps under earlier legislation had an undefined position (2 Op. Atty. Gen., 357). It was sometimes regarded as belonging to the Army (id., 239–241, 353; id., 117), and sometimes as an adjunct of the Navy (1 id., 381; 2 id., 78; 5 id., 705; *Wilkes* v. *Dinsman*, 7 How., 125). It appears to have been assimilated to the Army as to organization, discipline, and pay (Winthrop, vol. 1, p. 94). Later it was definitely incorporated with the Navy (act of June 30, 1834, sec. 1621, R. S.), and has since that date been maintained by the Government under a separate and distinct provision of the Constitution authorizing Congress to provide and maintain a Navy (art. 1, sec. 8, clause 11). It is recognized in article 77 as falling within the designation "other forces" in the exception which that article provides, by the terms of which officers of this corps, detached for service with the Army by order of the

President, and when thus detached only, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to the forces of the Marine Corps so detached.

VOLUNTEERS.

The militia called into actual service of the General Government and the Marine Corps are thus clearly other forces within the meaning of the seventy-seventh article of war, and the only difficulty we have in applying the article is to the remaining class of troops, to wit, volunteers. The term "volunteers" has generally designated those temporary military organizations or bodies of men, other than the militia in active service, which the Government employs and maintains temporarily in the military service in time of war or public danger. It is not so easy to state the characteristics of volunteers, for the reason that there has never been, as in the case of militia and regulars, standing or permanent legislation concerning them. It seems to have always been the policy of the Government to resort to special legislation after an emergency had arisen calling for the use of a large army under which volunteers have been called into the service. In consequence their character has varied. It may be stated generally that the special acts resorted to in the earlier periods of our history down to and including the civil war period gave to the volunteer armies organized thereunder the characteristics of militia in actual service, and the War Department appears to

have held under an article of war then in force (article 97, code of 1806) that as to trial by courts-martial these earlier volunteer armies were to be regarded as synonymous with the militia forces in actual service, and that the requirement of said article that courts-martial for the trial of troops other than regulars should be by "militia officers only" would be satisfied by constituting such courts of either volunteer or militia officers. The special legislation resorted to in 1899 to create the volunteer army of that year—the one to which the petitioner belonged at the time of his trial, conviction, and sentence—gave that army the character of a provisional force supplemental to the Regular Army, and the War Department held under the articles of war then in force (article 77, code of 1874) that this particular volunteer army was not within the designation "other forces" within the meaning of said article 77, and was therefore triable, like regulars, by courts-martial composed of officers of any authorized forces.

It appears from the foregoing statement that the view of the War Department has been that the revision of the statutes in 1874 effected no change in the law as to trial by courts-martial of troops other than regulars; that the new and existing seventy-seventh article of war was, in effect, a reenactment of the old article 97; that both before and since the revision of 1874 the question whether any particular volunteer army was subject to trial by court-martial as regulars or militia must be determined by reference to the legislation under which such army was raised. If under

this legislation it had the essential characteristics of the militia, the officers and soldiers composing it were exempt from trial by officers of the Regular Army. If, on the contrary, it was assimilated in status and organization to the regulars rather than the militia, they were triable, like regulars, by courts-martial composed of officers of either regulars or volunteers. A discussion of this earlier legislation follows; first, of the earlier articles of war:

(*a*) *The purpose of the earlier Articles of War was to secure to troops contributed to the General Government by the States trial by their own State officers.*

PARENT BRITISH CODE.

The parent British code, from which the earliest American articles were taken, contained no provision expressly disqualifying any particular class of officers from sitting on courts-martial. All the contingents which made up the army of Great Britain were subjected, equally with the permanent royal establishment, to the articles of war, and courts-martial for the trial of offenders might be constituted from commissioned officers selected indiscriminately from any of the authorized forces.

FIRST AMERICAN ARTICLES. CODE OF 1775.

The first American articles were prepared by a special committee appointed by the Continental Congress, of which committee General Washington was president, and were enacted by that Congress in June of 1775. Like the British articles, from which they

were largely taken, they contained no provision disqualifying any particular class of officers from sitting on courts-martial, all the component branches of the Continental Army being subjected equally to the operation of these articles.

SECOND AMERICAN ARTICLES. CODE OF 1776.

The articles of 1775 did not remain long in force. On June 14, 1776, the Continental Congress directed the Committee on Spies, of which Adams and Jefferson were members, to report a revision of the Rules and Articles of War, and in September of that year, upon the report of said committee, enacted what is known as the Military Code of 1776. It is in these articles that we find the first expression of a rule of disqualification of officers of the regular forces to sit upon courts-martial for the trial of certain classes of troops, the provisions in this respect being as follows:

> SEC. 17, ART. 1. The officers and soldiers of any troops, whether minute men, militia, or others, being mustered and in Continental pay, shall, at all times, and in all places, when joined, or acting in conjunction with the regular forces of the United States, be governed by these Rules or Articles of War, and shall be subject to be tried by courts-martial in like manner with the officers and soldiers in the regular forces, save only that such courts-martial shall be composed entirely of militia officers of the same provincial corps with the offender.
>
> That such militia and minute men as are now in service, and have, by particular contract with the respective States, engaged to be

governed by particular regulations while in Continental service, shall not be subject to the above Articles of War. (See Winthrop's Military Law and Precedents, vol. 2, p. 1501.)

The purpose and intent of the foregoing article of war are not difficult to discern. It was not, as intimated by the court below, to guard against the feeling of jealousy and distrust with which the professional soldier was regarded, for the reasons (1) that the so-called regular forces of the Revolutionary war period were not made up of professional soldiers, but of citizens who voluntarily left their civil pursuits for short periods of service, and who in every material regard resembled the volunteers of later wars, and (2) because the article guarded quite as effectively against trial by officers belonging to the contingents of other States, as to whom no such feeling of jealousy or distrust could have been entertained, as it did against trial by officers of the regular forces. The language of the article indicates a very different intent. It was an expression in military legislation of a political doctrine generally urged at that time in an extreme form that each State should be, to the greatest extent practicable, self-governing. The article was in effect an assertion by a State of control over its own troops in Continental service and pay, not only against the Government of the Confederation, but against the government of any other State, and, as held by the judge-advocate-general in an opinion rendered June 28, 1898, its purpose was to secure to State troops trial by their own officers. (Appendix 2, p. 7.) If jealousy or distrust were the

basis of the article, it was not directed specially to the military arm of the central Government, but to the central Government itself, to which absolutely necessary powers, civil or military, were conceded by the States, with the greatest reluctance.

The articles of 1776, with unimportant amendments, none of which affected the article in reference, remained in force during the Revolutionary war and for a period of about seventeen years after the organization of the Government under the Constitution (until 1806). During this period the Regular Army was created (act of September 29, 1799, 1 Stat., 93), and the militia was several times called into active service of the United States under general militia laws of 1792–1795 (1 Stat., 367; id., 403; id., 522; 2 Stat., 241; id., 383). The acceptance of volunteers was likewise authorized during this period by act of March 3, 1791, section 8 (1 Stat., 223), and notably by act of May 28, 1798 (1 Stat., 558), and the acts supplementary and amendatory thereto of June 22, 1798, and March 2, 1799, section 6 (1 Stat., pp. 578, 726), when in view of possible war with France the President was authorized to raise a provisional army of volunteers of 10,000 men. An examination of this legislation shows that the volunteers authorized were in effect detachments from the militia, differing in no material regard from the latter. In fact, in all this earlier legislation there is confusion in the use of the terms "militia" and "volunteers," and failure to distinguish clearly between these two classes of troops. None of the organizations of volunteers, so called, authorized by the legislation

here in reference, was actually received into the service of the General Government and organized as United States troops, and there arose, therefore, no occasion for interpreting and applying section 17, article 1, above quoted, to them.

THIRD AMERICAN ARTICLES. CODE OF 1806.

Congress, by act of April 30, 1806, entitled "An act for establishing rules and articles for the government of the armies of the United States," enacted a new military code generally designated "The Articles of 1806." The provisions of the articles of 1776 above quoted appear in this new code in the following form:

> ART. 97. The officers and soldiers of any troops, whether militia or others, being mustered and in pay of the United States, shall, at all times and in all places, when joined, or acting in conjunction with the regular forces of the United States, be governed by these rules and articles of war, and shall be subject to be tried by the courts-martial in like manner with the officers and soldiers in the regular forces, save only that such courts-martial shall be composed entirely of militia officers.

This article omits the concluding clause of the corresponding article of the Code of 1776, above quoted, in respect of the exemption from the articles of war of troops under contract with the respective States to be governed by particular regulations while in Continental service. In all other respects it is substantially identical with that article, with the single exception that the

requirement of the latter that courts for the trial of "minute men, militia or others * * * shall be composed entirely of militia officers *of the same provincial corps with the offender*," is modified by omitting the italicized words.

The Regular Army at the time of the enactment of article 97 was composed of the equivalent of three small regiments, of an aggregate strength of about 3,000 men (2 Stat., 132), and its average strength, prior to 1806, had not much exceeded these numbers. Contemporary history does not inform us that there existed toward this small body of soldiers any jealousy or distrust, and it is not reasonable to presume that the article was in any degree based upon any prejudice against the Regular Army as a body. The article remained, as before, an assertion of control by the States over the troops furnished the General Government and its purpose to secure to State troops trial by their own officers, the only modification being that the right was conceded to constitute courts-martial for the trial of offenders belonging to the contingent of any particular State of officers selected indiscriminately from any of the State contingents.

The articles of 1806, unamended in respect of article 97 above quoted, continued in force until the revision of 1874, and constituted, therefore, the governing military code during the war of 1812, the Mexican war, the war with the Seminoles, and the war of the rebellion. Volunteer armies were raised during each of these wars by special acts of Congress: For

the war of 1812 by the act of February 6 of that year (2 Stat., 676); for the Seminole war by the act of May 23, 1836 (5 Stat., 32); for the war with Mexico by the act of May 13, 1846 (9 Stat., 9). During the war of the rebellion volunteer troops were called out first under the President's proclamation of May 3, 1861 (12 Stat., 1260), and later under the acts of July 22 and 25, 1861 (12 Stat., 268, 274), and of July 17, 1862 (12 Stat., 598); also under the enrollment act of March 3, 1863 (12 Stat., 731), and acts amendatory thereto of February 24 and July 4, 1864, and March 3, 1865 (13 Stat., 6, 379, 487), popularly known as the Draft Acts.

The more relevant provisions of the foregoing acts, with extracts from Executive proclamations and supplementary general orders of the War Department, showing in detail the administrative methods pursued in raising certain of these volunteer armies, are inserted as Appendix 1 to this brief. An examination of these several acts shows:

(*b*) *That their effect was to invest the volunteer armies raised under their provisions with the characteristics of State troops, assimilating them in this regard to the militia in actual service.*

The very close connection between the volunteer armies of the war of 1812 and the Seminole war and the militia, and that these volunteer armies were in effect detachments from the militia, is very clearly revealed by an examination of the acts under which they were raised, and which contemplated that the

volunteers authorized might be drawn from the already organized militia or taken from the body of the people; that in either event, and until called into actual service of the General Government, the accepted organizations should "be bound to do regular militia duty as is required by law in like manner as before the passage of this act." (Appendix 1, p. 61) The quoted provision appears in the act of May 3, 1836, in the following form: "But, until called into actual service, such companies, battalions, squadrons, regiments, brigades, or divisions shall not be considered as exempt from the performance of militia duty as required by law in like manner as before the passage of this act." (Appendix 1, p. 64) That the volunteer troops called out during these two wars and the subsequent war with Mexico were in effect State troops is shown by the provisions of these acts that—

> the said volunteers so offering their services shall be accepted by the President in companies, battalions, squadrons, regiments, brigades, or divisions, *whose officers shall be appointed in the manner prescribed by law in the several States and Territories to which such companies, battalions, squadrons, regiments, brigades, or divisions shall respectively belong.* (Act of February 6, 1812, sec. 1; act of May 23, 1806, sec. 3, and act of May 13, 1846, sec. 5.)

Also in the further provision—

> That where any company, battalion, squadron, regiment, brigade, or division of militia already organized shall tender their voluntary

> service to the United States, such company, battalion, squadron, regiment, brigade, or division shall continue to be commanded by officers holding commissions in the same at the time of such tender; and any vacancy thereafter occurring shall be filled in the mode pointed out by law in the State or Territory wherein the said company, battalion, squadron, regiment, brigade, or division shall have been originally raised. (Act of February 6, 1812, sec. 1; act of May 23, 1836, sec. 3.)

As to the first volunteer troops raised during the war of the rebellion, those called into the service by the President's proclamation of May 3, 1861, it was provided by War Department general orders that all company and field officers of volunteer regiments received into the service under said proclamation "should be appointed by the governors of the States furnishing the same." (See G. O., No. 15, A. G. O., 1861.)

Acts very similar to those discussed above were enacted by Congress in the first year of the civil war for the raising of volunteers for that war. Under the first of these, the act of July 22, 1861, it was provided that "the governors of States furnishing volunteers under this act shall commission the field, staff, and company officers requisite for the said volunteers" (Appendix 1, p. 79), and that when vacancies occurred in any of the volunteer organizations received into the service under said act they should be filled by election, and that "all officers so elected shall be commissioned by the respective governors of the States or by the

President of the United States." (Appendix 1, p. ~~10~~ 72) The concluding phrase "or by the President of the United States" was repealed by the act of August 16, 1861, which vested appointments of commissioned officers of the volunteers exclusively in the governors of the States furnishing the same. (Appendix 1, p. ~~12~~ 74) Under the second of the acts passed during the civil war, that of July 25, 1861, volunteers therein authorized were required to be organized as prescribed in the act of July 22, 1861, above discussed.

Commenting upon the constitutional origin and authority for the acts of Congress here in reference, Mr. William M. Whiting, Solicitor of the War Department, says: "They were mainly founded on the power to receive militia of the States into the service of the Union, and troops were raised principally through the agency of governors of States." (War Powers under the Constitution, p. 206.)

The character of the volunteer troops raised under this earlier legislation of the civil-war period as State troops finds further and explicit recognition in the following provisions of army regulations and general orders of the War Department of this period:

> The governors of States are legally the authorities for raising volunteer regiments and commissioning their officers. Accordingly, no independent organizations, as such, will be hereafter recognized in the United States service. Copies of the rolls of muster into the service will be sent as soon as practicable to the governors of the States to which they be-

long by the commanders of all brigades, regiments, or corps heretofore recognized as independent of State organizations; and all vacancies of commissions in such regiments and corps will be hereafter filled by the respective governors according to law. Wherever a regiment is composed of companies from different States, it will be considered as belonging to the State from which the greatest number of companies was furnished for that regiment. (G. O., No. 18, A. G. O., February 21, 1862.)

1. By direction of the Secretary of War, the following addition is made to paragraph 9, page 10, Revised Regulations for the Army:

Except commissions issued by the President to officers of volunteer regiments, which will be considered the same as if issued by the governors of States. (G. O., No. 23, A. G. O., March 3, 1862.)

2. Officers will be mustered into the service only on the authority of the governor of the State to which their regiments belong.

3. Until regiments are organized and their muster rolls completed, they will be under the exclusive control of the governors of the States, and all requisitions for quartermaster, medical, and ordnance stores and contracts for subsistence will, if approved by them, be allowed and not otherwise. (G. O., No. 75, A. G. O., July 8, 1862.)

The enrollment or draft act passed on March 3, 1863, and the acts amendatory thereto did not disturb in any essential regard, except in the manner of the recruiting,

the system of raising volunteer armies prescribed in the acts above discussed. Under these draft acts quotas were assigned, as before their enactment, to territorial subdivisions, and the recruits drafted in any particular State were either distributed among volunteer organizations already in the service from those States, or created into new organizations, which, like the old ones, were organized and officered by the State governors. The recruiting passed, by the provisions of the draft acts, more directly under the supervision and control of the General Government and particularly of the Provost-Marshal-General's Department; but even in this respect the cooperation of governors of States was invited and accepted. (Appendix 1, p. 83) In all other regards material to this discussion the preexisting system was not disturbed, and the troops raised under these later acts were just as much *State troops* as those raised in the earlier periods of the war.

The assimilation of the volunteer forces in service from 1806 to 1865 to the militia called into active service of the General Government during the same period is further revealed by comparing the special laws and regulations concerning these volunteers with the standing legislation under which the militia is called into active service (1 Stat., 272, 408, 424; 2 Stat., 1803; 12 Stat., 597). Making this comparison we find that the plan prescribed by law for raising volunteer armies was substantially the same as that prescribed for calling the militia into the service of the General Government. The number of volunteers to

be raised was either fixed in special legislation authorizing them (Appendix 1, p. 74, sec. 1), or left to the discretion of the President (Appendix 1, p. 76, sec. 1), as in the case of the militia (2 Stat., 424). Volunteers were to be apportioned among the several States and Territories on the basis of Federal population (Appendix 1, p. 74, sec. 1), and similarly the militia was apportioned (12 Stat., 597). The militia, when called into the service of the United States, was required to be organized in the mode prescribed by law for volunteers (12 Stat., 597). The President addressed requisitions to the governors of States to furnish their respective quotas of volunteers just as he did when the militia was called out, and these quotas of volunteers were organized and officered by the governors of the States, just as were organized and officered the corresponding quotas of militia forces. When mustered and accepted into the service these volunteer regiments, battalions, etc., like the corresponding militia organizations called into the service, took State designations, such as the First Missouri, Fifty-third Iowa, One hundred and third New York, and after being so mustered, as well as before, the necessary commissioned officers for both classes of troops were appointed by the respective State governors. It can not be doubted that as thus constituted these volunteer organizations were in *esprit de corps* and in all other material regards just as much State troops as were the militia organizations called into the service of the General Government.

The vesting by law of the appointment of officers of the volunteer forces in governors of States was of itself a recognition by Congress of the character of volunteers as State forces. Upon no other theory could the exercise of such power by governors of States be defended.

During the period here under discussion, 1806 to 1874, the Articles of War of 1806 were in force, and article 97 of this code regulated trials by courts-martial of troops other than regulars. If we are correct in our contention above, that the purpose and effect of said article 97 were to secure to State troops trials by their own officers, it is very clear that the volunteer armies of that period, which had clearly the character of State troops, fell within its provisions. We are not informed as to how the article of war was construed in respect of the volunteer armies of the war of 1812 and the Seminole and Mexican wars, as the precedents of that period are not well preserved. The act of February 6, 1812, under which the volunteers of the first of these wars were raised, was repealed by the act of January 29, 1813 (2 Stat., 794), which provided in their stead an increase in the Regular Army. The few volunteers which were in fact raised during this war—four regiments in all—were in the service for such a short period that it is doubtful if any occasion arose for applying the article to them. The practice seems not to have been uniform during the Mexican war, an examination of fifty court-martial cases selected at random from the files

of the War Department showing twelve of these cases tried by mixed courts of regular and volunteer officers and the remainder by courts-martial composed exclusively of volunteer officers. It is probably true that as a general rule the practice was to try volunteers by exclusively volunteer courts.

But that the ninety-seventh article of war was construed and applied to the volunteer armies of the civil war in the sense herein claimed is indicated in the following opinion rendered by Judge-Advocate-General Holt, on November 19, 1863, in which, reviewing previous opinions of his office for the civil war period, he says:

> The words "militia officers," as employed in the ninety-seventh article of war, have been interpreted since the commencement of the rebellion *as synonymous, as far as the organization of courts-martial is concerned, with volunteer officers. This construction undoubtedly accords with the spirit of the article, and in its practical enforcement the object of the rule is accomplished.*

The provision of article 97 was that—

> Officers and soldiers of any troops, whether militia or others, being mustered and in pay of the United States, shall at all times and in all places, when joined or acting in conjunction with regular forces of the United States, be governed by these rules and articles of war, and shall be subject to be tried by courts-martial in like manner with the officers and soldiers in the regular forces; *save only that such courts-martial shall be composed entirely of militia officers.*

Article 97 made no express mention of the class of troops known as volunteers, and, strictly construed, did not permit the trial of offenders of this branch by their own officers. Such trials were to be by *militia officers only.* This was clearly impracticable, if the two classes of troops were held to be separate and distinct forces, because of the very large number of volunteer troops and the relatively insignificant number of militia called into the service during that period. Administrative construction was resorted to to cure an obvious defect of the article, it being held that the words "militia officers" as employed in this article were synonymous with the words "volunteer officers;" that is, that the two classes of troops were one and the same force in the sense of an article of war which had to do with the enforcement of discipline through the agency of courts-martial. It is undoubtedly true that this construction was not in accord with the strict letter of the article, but was in accord with its spirit, for the reason, already demonstrated, that the volunteer armies of that period were directly assimilated to the militia in actual service, possessing with them the essential characteristics of State troops.

We are now prepared to consider the latest revision of the Articles of War, and legislation authorizing the use of volunteer troops enacted subsequently to their adoption, and to indicate the construction and application of said articles to these later volunteer armies.

FOURTH AMERICAN ARTICLES. CODE OF 1874.

The articles of 1806 were reenacted in modified form by section 2 of the act of June 20, 1874 (18

Stat., 113), and as reenacted constitute the existing military code, usually designated "The Articles of 1874." The provisions of the articles of 1806 above discussed appear in the revision of 1874 in the following form:

> ART. 64. The officers and soldiers of any troops, whether militia or others, mustered and in the pay of the United States, shall, at all times and in all places, be governed by the Articles of War, and shall be subject to trial by courts-martial.
>
> ART. 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in article 78.

Article 78, referred to in the article last above quoted, relates to the Marine Corps, and has no bearing upon this case beyond the fact already noted, that its effect was to declare the Marine Corps to be within the designation "other forces" as employed in the seventy-seventh article, notwithstanding which they might, when detached for service with the Army by order of the President, be tried by officers of the Regurar Army.

(c) *The intent of the new articles, like that of the antecedent articles which they replaced, was to secure to troops contributed by the States trial by their own officers.*

The act of Congress which authorized the revision of 1874 provided in section 3 thereof that all laws in force on December 1, 1873, should be embraced in that revision. The seventy-seventh article of the

revised code, like its predecessors, makes no express mention of volunteers. The language employed, "other forces," is general and susceptible of different constructions. We are therefore entitled to consult the original legislation to ascertain its true meaning. The term "other forces," employed in the new article, evidently refers back to the words "any troops, whether militia or others, mustered and in pay of the United States," as employed in the preceding (sixty-fourth) article of war and in article 97 of the code of 1806; and this latter language is traceable to that of section 17, article 1, of the code of 1776, to wit: "The officers and soldiers of any troops, whether minute men, militia, or others, being mustered and in Continental pay." The history of this early legislation establishes conclusively, as we have shown, that its object was to prevent officers of the Federal Army sitting for the trial of officers or soldiers belonging to troops raised under the sovereignty of the States.

It is respectfully submitted that in view of the indefinite and general language in which the seventy-seventh article of war is expressed, and of the fact that it was required by law to be a reenactment of earlier legislation *in pari materia*, it should not be construed as having any broader scope or application than the antecedent articles which it replaced.

Two volunteer armies were authorized subsequent to the enactment of these articles. The first, the one for the war with Spain, was raised under the act of April 22, 1898, which act, and the administrative construc-

tion thereof by the War Department, is inserted as Appendix 2 of this brief. (p. 99) Its provisions are not material to this discussion.

The second volunteer army, the one raised for the Philippine insurrection, was authorized by the act of March 2, 1899, and was the army to which the petitioner belonged at the time of his trial, conviction, and sentence. It is contended by appellant that—

(*d*) *The effect of the act of Congress approved March 2, 1899, was to invest the Volunteer Army raised under its provisions with a character essentially different from that of the volunteer armies of previous wars, and to assimilate it to the Regular Army to the extent of taking it out of the designation "other forces" within the meaning of the seventy-seventh article of war.*

The provisions of the act of March 2, 1899, pertinent to the issues here under consideration are the following:

> 30 Stat., 977, Chap. 352: "An act for increasing the efficiency of the Army of the United States, and for other purposes."

The first eleven sections of this act relate exclusively to the Regular Army, defining its component parts and prescribing their organization.

> SEC. 12. That to meet the present exigencies of the military service the President is hereby authorized to maintain the Regular Army at a strength of not exceeding sixty-five thousand enlisted men, to be distributed amongst the several branches of the service, including the Signal Corps, according to the needs of each, and

raise a force of not more than thirty-five thousand volunteers to be recruited as he may determine from the country at large, or from the localities where their services are needed, without restriction as to citizenship or educational qualifications, and to organize the same into not more than twenty-seven regiments organized as are infantry regiments of war strength in the Regular Army, and three regiments to be composed of men of special qualifications in horsemanship and marksmanship, to be organized as cavalry for service mounted or dismounted: *Provided*, That each regiment shall have one surgeon with the rank of major; two assistant surgeons, one of whom shall have the rank of captain and one that of first lieutenant; and three hospital stewards: *Provided further*, That such increased regular and volunteer force shall continue in service only during the necessity therefor, and not later than July first, nineteen hundred and one.

All enlistments for the volunteer force herein authorized shall be for the term of two years and four months, unless sooner discharged.

SEC. 13. That the President shall have power to continue in service or to appoint, by and with the advice and consent of the Senate, brigadier-generals of volunteers, who, including the brigadier-generals of the Regular Army, shall not exceed one for every four thousand enlisted men actually in service, and major-generals of volunteers, who, including the major generals of the Regular Army, shall not exceed one for every twelve thousand enlisted men: *Provided*,

That Regular Army officers continued or appointed as general officers or as field or staff officers of volunteers under the provisions of this act shall not vacate their Regular Army commissions: *And provided further*, That no general officers appointed under the provisions of this section shall be continued in service as such beyond July first, nineteen hundred and one. * * *

SEC. 14. That the President is hereby authorized to continue in service, or to appoint, by and with the advice and consent of the Senate, officers of the volunteer staff as follows:

* * * Six commissaries of subsistence with the rank of major, and twelve commissaries of subsistence with the rank of captain. * * *

The foregoing act constitutes a marked departure from legislation theretofore resorted to by Congress for creating volunteer armies. It was the first legislation in our history where Congress, in authorizing a volunteer army, appealed directly to the people, *entirely* ignoring the agency of the States. This act of 1899 was to be administered wholly by United States officers, neither the governors nor other State authorities having any official functions to perform in relation to it. The power of appointment of officers was in no measure delegated. The recruiting was expressly required to be from the country at large, and those volunteering were not mustered in as State organizations, as in previous wars, but were required to be enlisted as individuals *and engaged directly with the United States to serve.*

In another regard highly material to this discussion the act of 1899 was different from prior acts authorizing volunteers. All these prior acts had, without exception, contained provisions expressly subjecting the volunteer troops authorized by them to the laws, orders, and regulations governing the Regular Army, and to trial by courts-martial. The act of 1899 contained no such provision. The court below, referring to a provision in the act of April 22, 1898, subjecting the volunteers to the laws, regulations, and orders pertaining to the regular service, held that the effect of such a provision was to demonstrate that the volunteers called out under that act were *other* forces than the Regular Army, arguing in that connection that if they were a part of the Regular Army "they were subject to the laws, orders, and regulations governing it without a special declaration to that effect." It will certainly be conceded that if the presence of such a provision in the act of 1898 demonstrates, as contended by the court, that the Volunteer Army to which it related was *other* forces than the regulars, then the absence of such a provision in the act of 1899 must be equally potent to prove that the volunteer troops it provided were *one* force with the regulars—at least not "other forces"—within the restricted meaning of the seventy-seventh article of war.

Twenty-five regiments in all were raised under this act, all of whose officers were appointed *by the President from the country at large.* The single cavalry regiment raised took the designation "Eleventh Regiment

of Cavalry, United States Volunteers," following and supplementing the ten regiments of cavalry in the regular service. The twenty-four regiments of infantry when organized received similar designations, to wit, "Twenty-sixth Regiment of Infantry, United States Volunteers," the Twenty-seventh, etc., supplementing the twenty-five regiments of infantry already in the regular service. The practice which this legislation permitted of giving regular officers commissions in the volunteers, a practice generally restricted by law when the power of appointment was vested in governors of States to one field officer to a regiment, obtained to a greater extent in the Volunteer Army of 1899 than in any previous one. Nearly all the field officers originally appointed for these twenty-five regiments—that is, all of the colonels, twenty-two of the twenty-five lieutenant-colonels, and more than 80 per cent of the majors—were regular officers, holding volunteer commissions. Quite a number of lieutenants of the Regular Army served in these volunteer regiments as captains, and the staff officers of this army included a large number of regular officers temporarily appointed as such under the authority of section 14 above quoted. (Official Register of Officers of Volunteers in the Service of the United States, June 1, 1901.) The presence of these regular officers helped to assimilate, to an extent not attained in any previous war, the volunteer regiments with which they were connected with the regiments in the regular service, and to conform them in their drill and discipline to Regular Army standards.

These volunteer regiments as thus created were relieved of every semblance of State troops which characterized the volunteers of previous wars, and became in every essential regard truly national. The brigading of volunteer and regular regiments together was the rule rather than the exception, as during the civil war, and the assimilation of the two classes of troops was complete. Whatever feeling of jealousy, distrust, or prejudice which may have existed between the earlier State volunteer and the regular, urged as a basis of the rule of disqualification of regular officers to sit on courts-martial for the trial of volunteers, was in this last Volunteer Army wholly eliminated.

The act of March 2, 1899, bears a very close resemblance to legislation resorted to in our earlier history to effect temporary increase in the Regular Army of the United States. Reference is here made to the act of February 11, 1847, under which the Regular Army was temporarily increased for the Mexican war by the addition of new regiments. The relevant provisions of this act are the following:

9 Stat., 123. Chap. 8. AN ACT to raise for a limited time an additional military force, and for other purposes.

SEC. 1. That, in addition to the present military establishment of the United States, there shall be raised and organized, under the direction of the President, *for and during the war with Mexico*, one regiment of dragoons and nine regiments of infantry, each to be composed of the same number and rank of commissioned or noncommissioned officers, buglers, musicians, and privates, etc., as are provided for a regi-

ment of dragroons and infantry, respectively, under existing laws, and who shall receive the same pay, rations, and allowances according to their respective grades, and be subject to the same regulations and to the Rules and Articles of War; * * *

SEC. 2. That, during the continuance of the war with Mexico, the term of enlistment for the men to be recruited for the regiment authorized by this act shall be during the war, unless sooner discharged.

* * * * *

SEC. 5. *That the said officers, musicians, and privates, authorized by this act, shall immediately be discharged from the service of the United States at the close of the war with Mexico.*

There never was any question but that the troops authorized by the foregoing act were additions to the Regular Army and subject, with the regulars, to the articles of war and to trial by court-martial thereunder.

The act is significant in that it shows that the Regular Army may embrace, besides the organizations in service for an indefinite period, others which are to remain in the service for a limited time only, and that limited tenure alone does not distinguish the volunteer from the regular. But it is primarily significant in the close analogy observable between its provisions and those of the act of March 2, 1899. The troops raised under it, like those raised under the latter act, were called into the service directly by the General Government, were required to be recruited and officered

by it from the country at large, were held to service for the period of the war, and were to be disbanded, officers and men, upon its termination. They thus did not differ in a single material regard from the volunteers raised under the act of 1899, unless it should be held that the mere retention of the name "volunteer" was such material difference.

Further examples of provisional forces closely analogous in their constitution and legislative sanction with the volunteers of 1899 are to be found in those special classes of troops authorized by the latest army reorganization act of February 2, 1901. Section 36 of this act provides that the President may, in his discretion, raise a force of natives of the Philippine Islands not exceeding 12,000, to be constituted by voluntary enlistment, to be organized as scouts, with such officers as he may deem necessary, or to have the organization of troops or companies as prescribed for the Regular Army; further authorizing such troops or companies to be combined into squadrons or battalions, with no higher organization, however, than such squadron or battalion. Officers of these special troops of the grades of major and captain were to be selected by the President from the next lower grades in the Regular Army, while first and second lieutenants might be selected from either noncommissioned officers or enlisted men of the regulars or volunteers then in service or who had served since April 22, 1898, or from natives of the islands showing fitness for command, within the discretion of the President, such appointments to be provisional and for periods of four years each.

Section 37 of this act similarly provided for a provisional volunteer regiment for Porto Rico, the enlisted strength to be composed, as far as practicable, of natives, the regiment to be organized as are infantry regiments of the Regular Army, its field officers to be selected from officers of the next lower grades of the Regular Army, all officers to be appointed by the President, and the regiment to be continued in service until further directed by Congress.

The points of analogy of these special troops to the volunteer troops of 1899 are to be found (1) in the fact that both classes of troops were authorized by acts of Congress, the primary purpose of which was to effect a reorganization of the Regular Army; (2) both were made up exclusively of volunteers, and officered in the higher grades by regulars and in the subordinate grades by appointments by the President, and (3) both were, in fair contemplation of the statutes under which they were organized, in their nature emergency forces.

It is the contention of this brief that these special troops, like the volunteers of 1899, are one force with the regulars within the restricted sense of the seventy-seventh article of war; but it must be conceded that they are other forces than the regulars in certain respects; that there are many differences other than those noted above between them and regulars—differences as to tactical organization, pay and allowances prescribed or permitted by the act creating them, and differences in the matter of special administration and

regulation necessitated by the character of these troops and the nature of the service required of them—must be conceded. Under the construction of the seventy-seventh article of war, announced by the court below, it is open to question whether these troops must not be regarded as "other forces" than the regulars, and entitled to exemption under that article from trial by officers of the Regular Army. It would be clearly impracticable to extend them such exemption, for the reason that they are not assembled in larger tactical units than battalions and squadrons, and further because the nature of the duty assigned them—scouting duty—requires them to be split up into much smaller organizations than battalions or squadrons and widely scattered. There would ordinarily be too few of them in any one place to make it possible to convene a court of their own officers for the trial of offenders, and reliance must necessarily be had upon officers of organizations of the Regular Army with which they are, in small detachments, associated. In practice, this is what has been done and must continue to be done in the event these troops are retained in the service; but the legality of such practice, under the ruling of the court below, is open to serious question.

The court below reached the conclusion that the volunteers of 1899 were, under the seventy-seventh article of war, exempt from trial by regular officers, by rejecting the view herein advanced, that the purpose of that article was to exempt troops raised under the sovereignty of the States from trial by officers of the Federal Army, and holding that its intent was to secure to

the volunteers *trial by their peers.* The court, in so construing the seventy-seventh article of war and in discussing the reason which led to its enactment, in part says:

> It is grounded in that cardinal principle of the Anglo-Saxon jurisprudence that no man shall be tried or condemned save by the hearing and judgment of his peers; in that principle which inspired the rule that deprives judges of the power to try persons accused of heinous crimes in civil life and remits their trial to the forum of their peers—the jury.

This is believed to be the first expression ever made by a court of the view that a military accused was entitled to be tried by his peers, and is thought to be clearly erroneous. Trial by peers, although a cardinal principle of the common law, was never a principle of the common-law military of England or of its military statute law, which made the administration of military punishment an exception to the rule that "no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within the realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of the realm."

The character of military service necessitates many and serious departures in the matter of trials of military offenders from principles of common law. The Constitution recognizes this fact in the exception which it provides of "cases arising in the land or naval forces, or in the militia, when in actual service in time of war

or public danger," under the terms of which a military accused is not entitled, *of right*, to the privileges and safeguards extended by the amendments to persons accused of civil crimes (4 Wall., 142). It is recognized by the statute law in the denial to a military accused of the right of peremptory challenge (art. 88), and of the right to be confronted in noncapital cases, whatever may be their gravity, by witnesses against him, or to have compulsory process for obtaining witnesses in his favor (art. 91). In many other respects the articles of war and the regulations made by the President to carry them into effect are inconsistent with the provisions of the amendments of the Constitution and deprive officers and soldiers, in their military status, of rights guaranteed to citizens by the Constitution. The extension of such rights to a military accused would, in the language of an English author, be repugnant to the spirit of martial law and to the administration of military justice, which demands, above all other considerations, prompt trials and prompt punishments.

It is respectfully submitted that the court below, in construing the American articles as requiring military offenders to be tried by their peers, has ignored the construction supported by the history of these articles and engrafted on our military code a deduction from the civil practice antagonistic to the principles upon which military law is founded, and wholly foreign to military codes, either ancient or modern.

There remains to be noticed the contention of counsel for petitioner that the colored troops employed

during the civil war were, like the Volunteer Army of 1899, raised directly by the General Government, and that such troops were held exempt from trial by regular officers. Counsel might have instanced further the "Veteran Reserve Corps" and the "Veteran Volunteers" as having a status similar to the United States colored troops; but his further statement that the colored troops were identical in status with the volunteers of 1899, and that under the law they could not be tried by officers of the Regular Army, is misleading and inaccurate.

That this court may be fully advised of the character possessed by the organizations above noted, there are inserted, as Appendix 3 to this brief, the Executive orders under which the Veteran Reserve Corps and the Veteran Volunteers were organized, with a reference to the statute authorizing the raising of colored troops.

An examination of these orders shows that the Veteran Reserve Corps, at first designated the Invalid Corps, was organized under General Orders, No. 5, of the War Department, April 28, 1863, and General Orders, No. 111, March 18, 1864, and that it was composed of officers and enlisted men present with or absent from their commands and unfit for active field service on account of wounds or disease contracted in the line of duty but still fit for garrison service; in smaller measure of officers and enlisted men honorably discharged on account of wounds or disease contracted in the line of duty and who desired to reenter the service for light duty. It was thus mainly constituted by

transfer to it of officers and men who had originally entered the service as members of State organizations.

The Veteran Volunteers organized under War Department General Orders No. 191, June 25, 1863, were made up of men enlisted in the several States, who were permitted, at their option, to enter old regiments then in service. Officers of regiments, whose terms had expired, were authorized, *upon proper application and approval of their respective governors*, to raise companies and regiments of this class of troops, the officers to be recommissioned of the date of their original commissions, or to have their commissions continued so as to preserve their date of rank as fixed by their original muster into the United States service. It is expressly provided in paragraph 11 of the order creating this force that—

> Volunteers enlisted under this order will be credited as three years' men in the quotas of their respective States. *Instructions for the appointment of recruiting officers and for enlisting veteran volunteers will be immediately issued to the governors of States.*

The United States Colored Troops were organized under section 24 of the act of February 24, 1864 (Appendix 1, p. 87), which required the enrollment of all able-bodied male colored persons between the ages of 20 and 45 years resident in the United States. It further provided that men of color drafted, enlisted, or who may volunteer into the military service under its provisions should not be assigned as State troops but should be mustered into regiments or companies as

United States Colored Troops; but that they should be credited on the quotas of the several States or subdivisions of States wherein they were respectively drafted, enlisted, or had volunteered.

It is thus seen that these special classes of troops were not identical in status with the volunteers of 1899, but, on the contrary, were allied in many material regards with the State volunteers of that period, and constituted, as between the latter and the former, an intermediate force.

On December 16, 1864, the Judge-Advocate-General rendered an opinion on the subject of the constitution of courts-martial for the trial of officers and soldiers in the Veteran Reserve Corps and United States colored troops, in language as follows:

> In the absence of any statute law which either designates officers of the Veteran Reserve Corps or of the United States colored troops as regulars in express terms, or by a necessary implication from its provisions fixes upon them this status, the Secretary of War has not proceeded to so characterize them, and until he shall do so these officers should, so far as the composition of courts-martial is concerned, be regarded as a part of the volunteer force.

This is very far from being a ruling that these special troops had the legal status of volunteers raised by the States. The actual language of the opinion is strongly suggestive of the view that the Secretary of War might, under the laws and orders of the War Department under which these troops were organized,

have characterized them as having the status of regulars; that not having done so, "and until he should do so these officers should, so far as the composition of courts-martial is concerned, be regarded as a part of the volunteer force." The opinion appears thus to have turned rather upon the declared policy of the Government to accord a relatively small number of volunteer troops, raised directly by it during this period, the same privileges as were accorded to the larger number raised by the States, than upon the imperative requirement of the statute.

In the general view advanced in this brief these special troops might have been tried by either regular or volunteer officers, and the decisions to try them exclusively by the latter was based wholly upon policy and not upon legal necessity.

SECOND PROPOSITION.

That even if the petitioner were to be treated as an officer of "other forces" within the meaning of said article 77, that fact would not deprive the court-martial of regular officers which tried him of jurisdiction; this article relates entirely to the competency of members of a court-martial, not at all to its jurisdiction.

Article 77 contains no reference to the *jurisdiction* of a court-martial. It merely provides that certain officers "shall not be *competent* to sit on courts-martial to try" certain offenders. The jurisdiction of the court-martial, i. e., its power to hear and determine, is regulated entirely by other articles; as to offenses by articles 3, 5 to 9, inclusive, 13 to 28, inclusive, 30 to 62,

inclusive, and 65; as to persons by section 1342, Revised Statutes, and notably by articles 45, 46, 63, and 64 thereunder.

But article 77 does not purport to designate either the persons within the jurisdiction of courts-martial or the offenses for which they may be tried, its sole purpose being to place a limitation upon the qualification or competency of the members of such a tribunal, or to establish a statutory ground of challenge.

All the officers composing the court-martial which tried the petitioner were officers in the Regular Army. Upon arraignment before it he expressly stated that he had no objection to being tried by any member thereof. If it be held that the petitioner was an officer of other forces within the meaning of the seventy-seventh article, then all the members of the court were incompetent to try him under that article. Are their findings and sentence for this reason absolutely null and void, as contended by petitioner?

This question must be answered in the light of civil precedents, no case in point having arisen in the practice of courts-martial. There are two classes of these precedents—those relating to the verdict of incompetent jurors and those relating to the acts and judgments of disqualified judges. Before these precedents can be intelligently applied to the question here under discussion it must first be determined whether the analogy of the court-martial is to the civil jury or to the judge.

(*a*) *The analogy of the court-martial is to the jury.*

The Hon. Caleb Cushing, Attorney-General, in an

opinion rendered in 1853, held that this analogy was complete. His language is, in part, as follows:

> The power of the Secretary of War or Navy, or other lawful authority, to send back a case to the court-martial for revisal is called a singularity in jurisprudence. On the other hand, its apparent singularity, as we have seen, arises from not duly regarding the nature of a court-martial and its relation to the approving power. Until the sentence of a court-martial has been approved or disapproved the case still remains *sub judice*. In fact, the analogy of a court-martial is that of a jury in the trial of a civil case, the approving power in the former occupying the relation of the judge in the latter. The judge remands the case to the jury for further consideration. The verdict must be accepted by the judge and judgment rendered accordingly before the verdict can have its complete execution and effect, whether of conviction or acquittal. So, in the corresponding case, it must be with the proceedings of a court-martial as respects the approving power.
>
> The opposite impression has been derived from erroneous estimation of the fact that a court-martial graduates punishment in addition to finding the verdict of guilty. So may a jury. There is nothing in the nature of the institution of a jury to forbid its measuring the sentence as well as judging of the question of guilt or innocence. By the time-honored practice of the common law the jury measures the damages in all cases of unliquidated demand between party and party. Why not the same

> in criminal affairs? In fact it does so by the law of Virginia (Code of Virginia, ch. 199, secs. 23, 24) and of some other States of the Union. Thus the analogy is complete between a jury and a court-martial (6 Op., 206).

The analogy here claimed of the court-martial to the jury finds abundant support in the views of military law writers. Colonel Winthrop, in his recent and authoritative work on military law, discussing the history and nature of courts-martial, says:

> Not a part of the judiciary, but an agency of the executive department. Courts-martial of the United States, although their legal sanction is no less than that of the Federal courts, being equally with these authorized by the Constitution, are, unlike these, not a portion of the judiciary of the United States, and are not thus included among the "inferior" courts which Congress "may from time to time ordain and establish." * * *
>
> Not belonging to the judicial branch of the Government, it follows that courts-martial must pertain to the executive department; and they are, in fact, simply *instrumentalities of the Executive power*, provided by Congress for the President as Commander in Chief, to aid him in properly commanding the Army and Navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives.
>
> Thus, indeed, strictly, a court-martial is not a *court* in the full sense of the term, or as the same is understood in the civil phraseology. It has no common-law powers whatever, but only

such powers as are vested in it by express statute, or may be derived from military usage. None of the statutes governing the jurisdiction or procedure of the "courts of the United States" have any application to it; nor is it embraced in the provisions of the sixth amendment to the Constitution. *It is, indeed, a creature of orders, and, except in so far as an independent discretion may be given it by statute, it is as much subject to the orders of a competent superior as is any military body or person.*

A temporary summary tribunal, not a court of record. As a purely executive agency designated for military uses, called into existence by military order and by a similar order dissolved when its purpose is accomplished, the court-martial, as compared with the civil tribunals, is transient in its duration and summary in its action. It is not, in a legal sense, a "court of record," and, unlike the superior courts of record, has no fixed place of session, no permanent office or clerk, no seal, no inherent authority to punish for contempt, no power to issue a writ or judicial mandate, *and its judgment is simply a recommendation, not operative till approved by a revisory commander.*" * * * (Winthrop's Military Law and Precedents, vol. 1, pp. 53–55.) [Italics supplied.]

Indeed, in its taking of a statutory oath, its being subject to challenge, its hearing and weighing of evidence, its finding of guilt or innocence, and its liability to be reassembled to reconsider its verdict, it nearly resembles a traverse jury in a criminal court. (Id., pp. 62–63.)

To the same effect is Davis on Military Law, page 15, where, in discussing the authority and functions of courts-martial, he says:

> Their sentences, however, have no legal validity, being in the nature of recommendations merely until they have received the approval of a military commander designated by law for this purpose, called the *reviewing authority*. With such approval or confirmation, however, their sentences become operative and acquire the same sanction as the sentences of civil courts having criminal jurisdiction and are entitled to the same legal consideration.
>
> Courts-martial * * * are creatures of *orders*, the power to convene them, as well as the power to act upon their proceedings, being an attribute of *command*.

Colonel Winthrop, after setting forth, as above, the analogies which the court-martial sustains to the traverse jury, indicates the following aspects in which a court-martial may be said to be assimilated to the judge rather than the jury: (1) In its arraignment of the accused; (2) its entertaining of special pleas to its jurisdiction or competency as a court; (3) and of objections to the sufficiency of the pleadings and the admission of testimony, (4) its authority to grant continuances and to adjourn, and (5) its power to impose a sentence. But that the analogy to the judge here indicated is more apparent than real is conclusively shown by the same author, who, in his further comment upon the exercise of these attributes by courts-

martial, and speaking of pleas to the jurisdiction or competency, says:

> A court-martial is authorized to pass upon the question of its own authority to proceed to *try* under the convening order. *Its conclusion, indeed, upon such question is in the nature of a recommendation and not final; and if, having determined that it has not jurisdiction, it is thereupon ordered by the convening officer to take cognizance of the case, it will be its duty to comply.* As we have already seen, a court-martial is a creature of orders, and, except as to the exercise of an authority specifically devolved by statute, is subject to the orders of the proper superior equally as is any officer or body of officers in the Army. (Italics supplied.)

Further, in discussing objections to the sufficiency of the pleadings (charges and specifications), the same authority says:

> This motion (motion to quash) being of a summary and aggressive character, in the nature of a raid upon the indictment, it is agreed by the authorities that it is in all cases wholly *within the discretion of the court* whether or not it will allow a proceeding the effect of which is to eliminate the entire basis and material of the prosecution or an important part of it. * * * But if the motion is specifically granted, and it relates to the only charge or all the charges in the case, the court will communicate, through its president, to the convening authority the action taken and await his orders. * * * The commander, on receiving the report of the

> court, may, if he disapproves its action, *order it positively to proceed to try the charges, or require it to reconsider such action in the same manner as upon a final judgment.* [Italics supplied.] (Id., pp. 373, 378.)

We have already seen, in the opinion of the Attorney-General cited *supra*, that the power to impose a sentence which a court-martial possesses is one possessed by both jury and judge, and does not, therefore, establish any analogy to the latter. In its arraignment of an accused and its power to adjourn, a court-martial is controlled by orders of the convening authority; so that in all material regards cited above, in which a court-martial may be said to be assimilated to the judge, it is shown that such court decides under a direct accountability to the reviewing authority, who must be associated with the court-martial before any real analogy between it and a civil court is found. In the *Esmond case* (5 Mackey, 70) the supreme court of the District of Columbia supports the general view here contended for, saying:

> The effect and conclusiveness of any action of the court stands as much upon the reviewing officer's approval and order as upon the original proceedings and sentence of the court. The two constitute an entire proceeding and are to be considered together.

That the findings and sentence of a court-martial are lifeless and of no effect whatever until vitalized by the approval of the reviewing authority, and that they constitute a simple recommendation addressed to the

discretion of the latter, whose action thereon is absolutely essential in order to give them force and effect, is fully substantiated above. The similarity of such sentence to the verdict of a jury, which must likewise be converted into a judgment by the approval of the judge, is apparent, and the analogy of the court-martial to the jury would, as stated by Attorney-General Cushing, seem to be complete.

(*b*) *The verdict of a jury composed of incompetent persons, or a sentence of a court-martial likewise constituted, is voidable only, and if incompetency is not made the subject of timely objection, absolutely valid.*

In *Clark* v. *Van Vracken* (20 Barb., 281) it was held that:

> A challenge to a juror does not go to the jurisdiction of the tribunal; though a juror may be incompetent as such, the trial is not invalidated.

The authorities are uniform in supporting the doctrine announced in this case.

The military authorities recognize and apply the same doctrine as to trials by courts-martial. Winthrop, in discussing this precise question of the competency of members of courts-martial, and speaking of the terms "incompetent" and "disqualified," says:

> It must not be inferred from this use that it is intended that the juror or member is, by reason of liability to challenge, disqualified to act on the court, *or that his acting thereon impairs the legality of the proceedings.* (Winthrop's Military Law and Precedents, vol. 1, p. 344.)

In the Federal courts the doctrine that verdicts of juries are, for incompetency, voidable only and absolutely valid if the incompetency is not made the subject of timely objection is firmly established. In an early case (*Hollingsworth* v. *Duane*, Wallace C. C., 147) a defendant sought to have a verdict set aside because of the alienage of one of the jurors, of which fact he was ignorant prior to the verdict; but the court, although conceding that the ground was one which would have afforded a right of challenge had it been exercised in time, held that it was waived when not raised until after verdict. This ruling was approved by the Supreme Court in 4 Dallas (U. S.), 353.

This early precedent was followed and extended in *Kohl* v. *Lehlback* (160 U. S., 293), where the petitioner for a writ of *habeas corpus* had been convicted of murder by a jury, one of whose members was an alien, which fact constituted an express ground of challenge under the State statute. The Supreme Court held, not only that the right of challenge for this cause was one which could be waived, even where the accused was ignorant thereof at the time, but also that, after trial, the fact of incompetency could not be made a ground for *habeas corpus*. The court say (p. 302):

> The disqualification of alienage is cause of challenge *propter defectum*, on account of personal objection, and if, voluntarily, or through negligence, or want of knowledge, such objection fails to be insisted on, the conclusion that the judgment is thereby invalidated is wholly inadmissible. The defect is not fundamental as

affecting the substantial rights of the accused, and the verdict is not void for want of power to render it.

So where the jurors are required to be residents of the county or district, the fact that one or more of them is incompetent in this regard is not even a ground for a new trial if raised for the first time after verdict. (*Queen* v. *Hepburn*, 3 Cranch (U. S.), 290; *Fisher* v. *Yoder*, 53 Fed. Rep., 565.) Much less can it be a ground of attack in a collateral proceeding like *habeas corpus*.

The disqualification alleged in the case at bar, if it existed at all, was like that in *Kohl* v. *Lehlback* (*supra*), a "cause of challenge *propter defectum*," i. e., on account of personal incompetency. It is not a ground of challenge *propter affectum*, such as relationship or interest in the cause. (See Winthrop's Military Law, p. 294.)

The latter is a much more serious ground of challenge, and the courts are correspondingly less inclined, on grounds of public policy, to treat the right of challenge as waived. Yet, even in such cases, and even where the ground of disqualification exists on the part of the judge instead of one of the jurors, it has been held to be waived if not raised until after trial.

In Arkansas the constitution prohibited a judge from presiding in a cause where either of the parties was related to him. In *Pettigrew* v. *Washington Co.* (43 Ark., 33) one of the parties was a son of the judge, and it was there contended, as here, that the

judgment was void for want of jurisdiction. But the court held that as the objection was not raised before trial it had been waived.

The same ruling was applied in *Fowler* v. *Brooks*, (64 N. H., 423), where the justice of the peace who rendered the judgment was related to one of the parties.

In Tennessee the statute prohibits a judge from sitting in any cause where he is related to either of the parties, unless all of the latter consent in writing. It has been repeatedly held, however, that this provision is waived if not raised before trial and that where a judge, though related to one or more of the parties, renders a judgment after a trial, without objection, such judgment can not be collaterally assailed. (*Crozier* v. *Goodwin*, 1 Lea (Tenn.), 123; *Holmes* v. *Eason*, 8 Lea (Tenn.), 754. See, also, as announcing the same doctrine, *Wilson* v. *Smith*, 38 S. W. Rep. (Ky.), 870).

But it is not necessary in the case at bar to claim the full benefit of these latter decisions as to the acts of disqualified judges. The analogy of the court-martial is not to the judge, but to the jury. The fact that the finding of a court-martial "is simply a recommendation, not operative until approved by a revisory commander" (Winthrop's Military Law, p. 53), is in itself sufficient to make such finding more like a verdict than a judgment and the tribunal more like a jury than a court. And the right of challenge which applies to both jury and court-martial is everywhere subject to the same limitations; it must be exercised

before trial by the party in whose favor it exists or it will be waived.

In the case at bar there is no pretense that the petitioner exercised the right of challenge. The record shows an express waiver by him of any objection to the members who composed the court-martial, and there could not have been on his part the unavailing excuse of ignorance. Officer that he himself was, he must have known from what branch of the service the officers were drawn who composed the court-martial. As was said in *Hollingsworth* v. *Duane* (Wallace, C. C., 161), "This surely can not be pretended a secret or extraordinary cause of challenge."

From every standpoint, therefore, of precedent, principle, and natural justice, the petitioner, if he ever had any ground of objection to the competency of the members of the court-martial, has waived it, and he is now in no position to assail its proceedings.

THIRD PROPOSITION.

The court-martial having jurisdiction and acting within its powers, its proceedings can not be assailed by habeas corpus.

Whether the members of the court-martial that tried the petition were officers of "other forces" or not, whether its members were in all respects competent or incompetent, the fact remains that the court-martial had jurisdiction of the accused and of the offense, and there is no claim that it exceeded the powers of a court-martial. This being true, its proceedings will not be reviewed on *habeas corpus*. (Am. and Eng. Ency. of Law, Habeas Corpus, vol. 15, p. 176.)

Judgments of courts-martial: A court-martial is a special tribunal with jurisdiction of a particular class of cases. If such a court has no jurisdiction over the subject-matter of the charge which it has been convened to try, or inflicts a punishment forbidden by law, though its sentence be approved by the reviewing officers, the civil courts may, on habeas corpus, inquire into the question of jurisdiction and discharge the prisoner. To warrant a discharge, however, the sentence must be absolutely void, and not merely erroneous and voidable. Where courts-martial have jurisdiction their proceedings can not be collaterally impeached on habeas corpus for any mere error or irregularity committed within the sphere of their authority.

Custody under judgment of court-martial, United States.

Ex parte Miligan, 4 Wall. (U. S.), 2.

Ex parte Reed, 100 U. S., 13.

Ex parte Mason, 105 U. S., 696.

As is said by Mr. Justice Gray in *Johnson* v. *Sayer* (158 U. S., 109):

> The court-martial having jurisdiction of the person accused and of the offense charged, and having acted within the scope of its lawful powers, its decision and sentence can not be reviewed or set aside by the civil courts, by writs of *habeas corpus* or otherwise.

To the same effect is *Ex parte Reed* (100 U. S., 13), in which the court says:

> A writ of *habeas corpus* can not be made to perform the functions of a writ of error. To

warrant the discharge of the petitioner, the sentence under which he is held must be, not merely erroneous and voidable, but absolutely void.

No acts of military officers or tribunals, within the scope of their jurisdiction, can be revised, set aside, or punished, civilly or criminally, by a court of common law. (*Tyler* v. *Pomeroy*, 8 Allen, 484.)

In *Rose ex rel. Carter* v. *Roberts* (99 Fed. Rep., 948) the court said:

> It is not the office of a writ of *habeas corpus* to perform the functions of a writ of error in reviewing the judgment of a court-martial. Courts-martial are tribunals created by Congress, in pursuance of the power conferred by the Constitution, and have as plenary jurisdiction of offenses committed to them by the law military as do the circuit and district courts of the United States in the exercise of their statutory powers over other offenses. The question of jurisdiction may be reached by such a writ, as it may be when the judgment of any tribunal is attacked, but the range and scope of the inquiry is controlled by the same rules and limitations in either case. There must be jurisdiction to hear and determine and to render the particular judgment and sentence imposed; but if this exists, however erroneous the proceedings may be, they can not be reviewed collaterally, or redressed by *habeas corpus*. These principles have been repeatedly declared by the authorities. *In re Davidson* (C. C.), 21

Fed., 618; *Ex parte Reed*, 100 U. S., 13, 25 L. ed., 538; *In re Coy*, 127 U. S., 731, 8 Sup. Ct., 1263, 32 L. ed., 274; *Ex parte Yarbrough*, 110 U. S., 651, 4 Sup. Ct., 152, 28 L. ed., 274; *United States* v. *Prifgeon*, 153 U. S., 59, 14 Sup. Ct., 746, 38 L. ed., 631.

JOHN K. RICHARDS,
Solicitor-General.

E. H. CROWDER,
Lieutenant-Colonel and Judge-Advocate.

APRIL 17, 1902.

APPENDIX I.

WAR OF 1812.

2 Stat., 676. Approved February 6, 1812. Chapter 21.

AN ACT authorizing the President of the United States to accept and organize certain volunteer military corps.

That the President of the United States be, and he hereby is, authorized to accept of any company or companies of volunteers, either of artillery, cavalry, or infantry, who may associate and offer themselves for the service, not exceeding thirty thousand men, who shall be clothed and furnished with horses at their own expense, and armed and equipped at the expense of the United States after they shall be called into service, except such of them as may choose to furnish their own arms, and whose commissioned officers shall be appointed in the manner prescribed by law in the several States and Territories to which such companies shall respectively belong: *Provided*, That where any company, battalion, regiment, brigade, or division of militia already organized shall tender their voluntary service to the United States, such company, battalion, brigade, or division shall continue to be commanded by the officers holding commissions in the same at the time of such tender, and any vacancy thereafter occurring shall be filled in the mode pointed out by law in the State or Territory wherein the said company, battalion, regiment, brigade, or division shall have been originally raised.

SEC. 2. That any company, battalion, regiment, brigade, or division thus offering itself for the service shall be liable to be called upon to do military duty at any time the President of the United States shall judge proper, within two years after he shall accept the same, and shall be bound to continue in service for the term of twelve months after they shall have arrived at the place of rendezvous, unless sooner discharged; and when called into actual service, and whilst remaining therein, shall be under the same rules and regulations, and be entitled to the same pay, rations, forage, and emoluments of every kind, bounty and clothing excepted, with the regular troops of the United States: *Provided*, That, in lieu of clothing, every noncommissioned officer and private, in any company, who may offer themselves, shall be entitled when called into actual service, to receive in money a sum equal to the cost of the clothing of a noncommissioned officer or private (as the case may be) in the regular troops of the United States.

SEC. 3. That the President of the United States be, and he hereby is, authorized to organize the companies so tendering their service, as aforesaid, into battalions, squadrons, regiments, brigades, and divisions, as soon as the number of volunteers shall render such organization, in his judgment, expedient; but, until called into actual service, such companies shall be bound to do regular militia duty as is required by law, in like manner as before the passage of this act.

SEC. 8. That the sum of $1,000,000 be appropriated to defray the expenses which may be incurred under the provisions of this act, to be paid out of any money in the Treasury not otherwise appropriated.

2 Stat., 785. Approved July 6, 1812. Chapter 138.

AN ACT Supplementary to the act entitled "An act authorizing the President of the United States to accept and organize certain volunteer military corps."

That in all cases where volunteers have offered or hereafter shall offer their services to the United States, under the act entitled "An act authorizing the President of the United States to accept and organize certain volunteer military corps," it shall be lawful for the President of the United States to appoint and commission officers thereto, by and with the advice and consent of the Senate, anything in the said act to the contrary notwithstanding: *Provided*, That, prior to the issuing of such commissions, the volunteers aforesaid shall have signed an enrolment binding themselves to service, conformably to the provisions of the act to which this is a supplement.

SEC. 2. That the President be, and he is hereby, authorized to form the corps of volunteers into battalions, squadrons, regiments, brigades, and divisions, and to appoint thereto, by and with the advice and consent of the Senate, general, field, and staff officers, conformably with the military establishment of the United States, and who shall be entitled to the pay and emoluments of officers of a similar grade and corps in the Army of the United States.

SEC. 3. That it shall be lawful for the President of the United States, in the recess of the Senate, to appoint all the officers authorized by this act, which appointments shall be submitted to the Senate, at their next session, for their advice and consent.

2 Stat., 794. Approved January 29, 1813. Chapter 16.

AN ACT in addition to the act entitled "An act to raise an additional military force," and for other purposes.

That, in addition to the present military establishment of the United States, there be raised such number of regiments of infantry, not exceeding twenty, as, in the opinion of the President, may be necessary for the public service, to be enlisted for the term of one year, unless sooner discharged.

SEC. 18. That the act entitled "An act authorizing the President of the United States to accept and organize certain volunteer military corps," and the act entitled "An act supplementary to the act entitled 'An act authorizing the President of the United States to accept and organize certain volunteer military corps,'" be, and the same are hereby, repealed, from and after the 1st day of February next: *Provided*, That nothing herein contained shall be so construed as to deprive the officers and men who may have entered the service as volunteers, under the said acts, of any rights, immunities, or privileges therein secured, or the United States of the services of such volunteers, agreeably to the provisions of said acts.

SEMINOLE WAR.

5 Stat., 32. Approved May 23, 1836. Chapter 80.

AN ACT authorizing the President of the United States to accept the service of volunteers, and to raise an additional regiment of dragoons or mounted riflemen.

Be it enacted, etc., That the President of the United States be, and he hereby is, authorized to accept volunteers who may offer their services either as infantry or cavalry, not exceeding ten thousand men, to serve six to twelve months after they shall have arrived at

the place of rendezvous, unless sooner discharged; and the said volunteers shall furnish their own clothes, and, if cavalry, their own horses, and when mustered into service shall be armed and equipped at the expense of the United States.

SEC. 2. That the said volunteers shall be liable to be called upon to do military duty only in cases of Indian hostilities, or to repel invasions, whenever the President shall judge proper, and when called into actual service, and while remaining therein, shall be subject to the rules and articles of war, and shall be in all respects, except as to clothing, placed on the same footing with similar corps of the United States Army; and in lieu of clothing, every non-commissioned officer and private, in any company, who may thus offer themselves, shall be entitled, when called into actual service, to receive in money a sum equal to the cost of the clothing of a non-commissioned officer or private (as the case may be) in the regular troops of the United States.

SEC. 3. That the said volunteers so offering their services shall be accepted by the President in companies, battalions, squadrons, regiments, brigades, or divisions, whose officers shall be appointed in the manner prescribed by law in the several States and Territories to which such companies, battalions, squadrons, regiments, brigades, or divisions shall respectively belong: *Provided*, That where any company, battalion, squadron, regiment, brigade, or division, of militia already organized, shall tender their voluntary service to the United States, such company, battalion, squadron, regiment, brigade, or division shall continue to be commanded by the officers holding commissions in the same at the time of such tender; and any vacancy

thereafter occurring shall be filled in the mode pointed out by law in the State or Territory wherein the said company, battalion, squadron, regiment, brigade, or division shall have been originally raised.

SEC. 4. That the President of the United States be, and he is hereby, authorized to organize companies so tendering their services into battalions or squadrons, battalions or squadrons into regiments, regiments into brigades, and brigades into divisions, as soon as the number of volunteers shall render such organization in his judgment expedient; and the President shall, if necessary, apportion the staff, field, and general officers among the respective States or Territories from which the volunteers shall tender their services, as he may deem proper, but until called into actual service such companies, battalions, squadrons, regiments, brigades, or divisions shall not be considered as exempt from the performance of militia duty as required by law, in like manner as before the passage of this act.

SEC. 7. * * * and that the sum of $300,000, required to carry into effect the provisions of this act, is hereby appropriated out of any money in the Treasury not otherwise appropriated.

SEC. 8. That so much of this act as relates to volunteers shall be in force for two years from and after the passage of this act and no longer.

WAR WITH MEXICO.

9 Stat., 9. Approved May 13, 1846. Chap. 16.

AN ACT providing for the prosecution of the existing war between the United States and the Republic of Mexico.

That, for the purpose of enabling the Government of the United States to prosecute said war to a speedy and successful termination, the President be, and he is

hereby, authorized to employ the militia, naval, and military forces of the United States and to call for and accept the services of any number of volunteers, not exceeding 50,000, who may offer their services either as cavalry, artillery, infantry, or riflemen, to serve twelve months after they shall have arrived at the place of rendezvous, or to the end of the war, unless sooner discharged, according to the time for which they shall have been mustered into service; and that the sum of $10,000,000, out of any moneys in the Treasury, or to come into the Treasury, not otherwise appropriated, be, and the same is hereby, appropriated for the purpose of carrying the provisions of this act into effect.

SEC. 3. That the said volunteers shall furnish their own clothes, and, if cavalry, their own horses and horse equipments, and when mustered into service shall be armed at the expense of the United States.

SEC. 4. That said volunteers shall, when called into actual service and while remaining therein, be subject to the rules and articles of war, and shall be in all respects, except as to clothing and pay, placed on the same footing with similar corps of the United States Army; and in lieu of clothing every noncommissioned officer and private in any company who may thus offer himself shall be entitled, when called into actual service, to receive in money a sum equal to the cost of clothing of a noncommissioned officer or private (as the case may be) in the regular troops of the United States.

SEC. 5. That the said volunteers so offering their services shall be accepted by the President in companies, battalions, squadrons, and regiments, whose officers shall be appointed in the manner prescribed by

law in the several States and Territories to which such companies, battalions, squadrons, and regiments shall respectively belong.

SEC. 6. That the President of the United States be, and he is hereby, authorized to organize companies so tendering their services into battalions or squadrons, battalions and squadrons into regiments, regiments into brigades, and brigades into divisions, as soon as the number of volunteers shall render such organization, in his judgment, expedient; and the President shall, if necessary, apportion the staff, field, and general officers among the respective States and Territories from which the volunteers shall tender their services, as he may deem proper.

SEC. 9. That whenever the militia or volunteers are called and received into the service of the United States, under the provisions of this act, they shall have the organization of the Army of the United States, and shall have the same pay and allowances; and all mounted privates, noncommissioned officers, musicians, and artificers shall be allowed 40 cents per day for the use and risk of their horses, except of horses actually killed in action; and if any mounted volunteer, private, noncommissioned officer, musician, or artificer shall not keep himself provided with a serviceable horse, the said volunteer shall serve on foot.

WAR OF THE REBELLION.

12 Stat., 1260. Promulgated May 3, 1861.

Whereas existing exigencies demand immediate and adequate measures for the protection of the national Constitution and the preservation of the national Union by the suppression of the insurrectionary combinations

now existing in several States for opposing the laws of the Union and obstructing the execution thereof, to which end a military force in addition to that called forth by my proclamation of the fifteenth day of April, in the present year, appears to be indispensably necessary:

Now, therefore, I, Abraham Lincoln, President of the United States, and Commander in Chief of the Army and Navy thereof, and of the militia of the several States when called into actual service, do hereby call into the service of the United States forty-two thousand and thirty-four volunteers, to serve for the period of three years unless sooner discharged, and to be mustered into service as infantry and cavalry. The proportions of each arm and the details of enrollment and organization will be made known through the Department of War.

* * * * *

The call for volunteers, hereby made, and the direction for the increase of the Regular Army, and for the enlistment of seamen hereby given, together with the plan of organization adopted for the volunteers and for the regular forces hereby authorized, will be submitted to Congress as soon as assembled.

In the meantime I earnestly invoke the cooperation of all good citizens in the measures hereby adopted, for the effectual suppression of unlawful violence, for the impartial enforcement of constitutional laws, and for the speediest possible restoration of peace and order, and, with these, of happiness and prosperity throughout the country.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this third day of May, in the year of our Lord one thousand eight

hundred and sixty-one, and of the Independence of the United States the eighty-fifth.

[L. S.] ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

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12 Stat., 268. Approved July 22, 1861. Chapter 19.

AN ACT to authorize the employment of volunteers to aid in enforcing the laws and protecting public property.

Whereas certain of the forts, arsenals, custom-houses, navy-yards, and other property of the United States have been seized, and other violations of law have been committed and are threatened by organized bodies of men in several of the States, and a conspiracy has been entered into to overthrow the Government of the United States: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to accept the services of volunteers, either as cavalry, infantry, or artillery, in such numbers, not exceeding five hundred thousand, as he may deem necessary, for the purpose of repelling invasion, suppressing insurrection, enforcing the laws, and preserving and protecting the public property: *Provided,* That the services of the volunteers shall be for such time as the President may direct, not exceeding three years nor less than six months, and they shall be disbanded at the end of the war. And all provisions of law applicable to three years' volunteers shall apply to two years' volunteers, and to all volunteers who have been, or may be, accepted into the service of the United States, for a period not less than six months, in the same manner as

if such volunteers were specially named. Before receiving into service any number of volunteers exceeding those now called for and accepted, the President shall, from time to time, issue his proclamation, stating the number desired, either as cavalry, infantry, or artillery, and the States from which they are to be furnished, having reference, in any such requisition, to the number then in service from the several States, and to the exigencies of the service at the time, and equalizing, as far as practicable, the number furnished by the several States, according to Federal population.

SEC. 2. *And be it further enacted*, That the said volunteers shall be subject to the rules and regulations governing the Army of the United States, and that they shall be formed, by the President, into regiments of infantry, with the exception of such numbers for cavalry and artillery, as he may direct, not to exceed the proportion of one company of each of those arms to every regiment of infantry, and to be organized as in the regular service. * * *

SEC. 4. * * * The governors of the States furnishing volunteers under this act shall commission the field, staff, and company officers requisite for the said volunteers; but, in cases where the State authorities refuse or omit to furnish volunteers at the call or on the proclamation of the President, and volunteers from such States offer their services under such call or proclamation, the President shall have power to accept such services, and to commission the proper field, staff, and company officers.

SEC. 10. *And be it further enacted*, That the general commanding a separate department or a detached army is hereby authorized to appoint a military board or commission, of not less than three nor more than five

officers, whose duty it shall be to examine the capacity, qualifications, propriety of conduct, and efficiency of any commissioned officer of volunteers within his department or army who may be reported to the board or commission; and upon such report, if adverse to such officer, and if approved by the President of the United States, the commission of such officer shall be vacated: *Provided always*, That no officer shall be eligible to sit on such board or commission whose rank or promotion would in any way be affected by its proceedings, and two members, at least, if practicable, shall be of equal rank of the officer being examined; and when vacancies occur in any of the companies of volunteers an election shall be called by the colonel of the regiment to fill such vacancies, and the men of each company shall vote in their respective companies for all officers as high as captain, and vacancies above captain shall be filled by the votes of the commissioned officers of the regiment, and all officers so elected shall be commissioned by the respective governors of the States, or by the President of the United States.

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12 Stat., 274. Approved July 25, 1861. Chapter 17.

AN ACT in addition to the "Act to authorize the employment of volunteers to aid in enforcing the laws and protecting public property," approved July twenty-second, eighteen hundred and sixty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to accept the services of volunteers, either as cavalry, infantry, or artillery, in such numbers as the exigencies of the public service may in his opinion demand, to be organized as authorized by the act of the twenty-second of July, eighteen hundred and

sixty-one: *Provided*, That the number of troops hereby authorized shall not exceed five hundred thousand.

SEC. 2. *And be it further enacted*, That the volunteers authorized by this act shall be armed as the President may direct; they shall be subject to the Rules and Articles of War, and shall be upon the same footing in all respects with similar corps of the United States Army, and shall be mustered into the service for "during the war."

SEC. 3. *And be it further enacted*, That the President shall be authorized to appoint, by and with the advice and consent of the Senate, for the command of the volunteer forces, such number of major-generals and of brigadier-generals as may, in his judgment, be required for their organization.

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12 Stat., 284. Approved July 31, 1861. Chapter 34.

AN ACT authorizing the Secretary of War to reimburse volunteers for expenses incurred in employing regimental and other bands, and for other purposes.

SEC. 2. *And be it further enacted*, That the President, in accepting and organizing volunteers under the act entitled "An act to authorize the employment of volunteers to aid in enforcing the laws and protecting public property," approved July twenty-two, eighteen hundred and sixty-one, may accept the service of such volunteers without previous proclamation, and in such numbers from any State or States as, in his discretion, the public service may require.

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12 Stat., 317. Approved August 6, 1861. Chapter 57.

AN ACT To promote the efficiency of the Engineer and Topographical Engineer Corps, and for other purposes.

SEC. 3. *And be it further enacted*, That vacancies hereafter occurring among the commissioned officers

of the volunteer regiments shall be filled by the governors of the States respectively in the same manner as original appointments. And so much of the tenth section of the act approved July twenty-second, eighteen hundred and sixty-one, as is inconsistent herewith be, and the same is hereby, repealed.

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12 Stat., 326. Approved August 6, 1861. Chapter 63.

AN ACT To increase the pay of the privates in the Regular Army and in the volunteers in the service of the United States, and for other purposes.

SEC. 3. *And be it further enacted*, That all the acts, proclamations, and orders of the President of the United States after the fourth of March, eighteen hundred and sixty-one, respecting the Army and Navy of the United States, and calling out or relating to the militia or volunteers from the States, are hereby approved and in all respects legalized and made valid, to the same intent and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States.

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12 Stat., 731. Approved March 3, 1863. Chapter 75.

AN ACT for enrolling and calling out the national forces, and for other purposes.

Whereas there now exist in the United States an insurrection and rebellion against the authority thereof, and it is, under the Constitution of the United States, the duty of the Government to suppress insurrection and rebellion, to guarantee to each State a republican form of government, and to preserve the public tranquillity; and whereas for these high purposes a military force is indispensable, to raise and support which

all persons ought willingly to contribute; and whereas no service can be more praiseworthy and honorable than that which is rendered for the maintenance of the Constitution and Union, and the consequent preservation of free government; therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof, between the ages of twenty and forty-five years, except as hereinafter excepted, are hereby declared to constitute the national forces, and shall be liable to perform military duty in the service of the United States when called out by the President for that purpose.

SEC. 3. *And be it further enacted*, That the national forces of the United States not now in the military service, enrolled under this act, shall be divided into two classes, the first of which shall comprise all persons subject to do military duty between the ages of twenty and thirty-five years, and all unmarried persons subject to do military duty above the age of thirty-five and under the age of forty-five; the second class shall comprise all other persons subject to do military duty; and they shall not, in any district, be called into the service of the United States until those of the first class shall have been called.

SEC. 4. *And be it further enacted*, That for greater convenience in enrolling, calling out, and organizing the national forces, and for the arrest of deserters and spies of the enemy, the United States shall be divided into districts, of which the District of Columbia shall constitute one, each Territory of the United States

shall constitute one or more, as the President shall direct, and each Congressional district of the respective States, as fixed by a law of the State next preceding the enrollment, shall constitute one: *Provided*, That in States which have not by their laws been divided into two or more Congressional districts, the President of the United States shall divide the same into so many enrollment districts as he may deem fit and convenient.

SEC. 5. *And be it further enacted*, That for each of said districts there shall be appointed by the President a provost-marshal, with the rank, pay, and emoluments of a captain of cavalry, or an officer of said rank shall be detailed by the President, who shall be under the direction and subject to the orders of a provost-marshal-general, appointed or detailed by the President of the United States, whose office shall be at the seat of government, forming a separate bureau of the War Department, and whose rank, pay, and emoluments shall be those of a colonel of cavalry.

SEC. 8. *And be it further enacted*, That in each of said districts there shall be a board of enrolment, to be composed of the provost-marshal, as president, and two other persons, to be appointed by the President of the United States, one of whom shall be a licensed and practicing physician and surgeon.

SEC. 9. *And be it further enacted*, That it shall be the duty of the said board to divide the district into subdistricts of convenient size, if they shall deem it necessary, not exceeding two, without the direction of the Secretary of War, and to appoint, on or before the tenth day of March next, and in each alternate year thereafter, an enrolling officer for each subdistrict, and to furnish him with proper blanks and instructions; and he shall immediately proceed to enroll all persons

subject to military duty, noting their respective places of residence, ages on the first day of July following, and their occupation, and shall, on or before the first day of April, report the same to the board of enrolment, to be consolidated into one list, a copy of which shall be transmitted to the provost-marshal-general on or before the first day of May succeeding the enrolment: *Provided, nevertheless*, That if from any cause the duties prescribed by this section can not be performed within the time specified, then the same shall be performed as soon thereafter as practicable.

SEC. 10. *And be it further enacted*, That the enrolment of each class shall be made separately, and shall only embrace those whose ages shall be, on the first day of July thereafter, between twenty and forty-five years.

SEC. 11. *And be it further enacted*, That all persons thus enrolled shall be subject, for two years after the first day of July succeeding the enrolment, to be called into the military service of the United States, and to continue in service during the present rebellion, not, however, exceeding the term of three years; and when called into service shall be placed on the same footing, in all respects, as volunteers for three years, or during the war, including advance pay and bounty as now provided by law.

SEC. 12. *And be it further enacted*, That whenever it may be necessary to call out the national forces for military service, the President is hereby authorized to assign to each district the number of men to be furnished by said district; and thereupon the enrolling board shall, under the direction of the President, make a draft of the required number. * * * In assigning to the districts the number of men to be furnished

therefrom, the President shall take into consideration the number of volunteers and militia furnished by and from the several States in which said districts are situated, and the period of their service since the commencement of the present rebellion, and shall so make said assignment as to equalize the numbers among the districts of the several States, considering and allowing for the numbers already furnished as aforesaid and the time of their service.

SEC. 33. *And be it further enacted*, That the President of the United States is hereby authorized and empowered, during the present rebellion, to call forth the national forces, by draft, in the manner provided for in this act.

SEC. 34. *And be it further enacted*, That all persons drafted under the provisions of this act shall be assigned by the President to military duty in such corps, regiments, or other branches of the service as the exigencies of the service may require.

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13 Stat., 6. Approved February 24, 1864. Chapter 13

AN ACT to amend an act entitled "An act for enrolling and calling out the national forces, and for other purposes," approved March third, eighteen hundred and sixty-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States shall be authorized, whenever he shall deem it necessary, during the present war, to call for such number of men for the military service of the United States as the public exigencies may require.

SEC. 2. *And be it further enacted*, That the quota of each ward of a city, town, township, precinct, or election district, or of a county, where the county is not

divided into wards, towns, townships, precincts, or election districts, shall be, as nearly as possible, in proportion to the number of men resident therein liable to render military service, taking into account, as far as practicable, the number which has been previously furnished therefrom; and in ascertaining and filling said quota there shall be taken into account the number of men who have heretofore entered the naval service of the United States, and whose names are borne upon the enrollment lists as already returned to the office of the provost-marshal-general of the United States.

SEC. 3. *And be it further enacted*, That if the quotas shall not be filled within the time designated by the President, the provost-marshal of the district within which any ward of a city, town, township, precinct, or election district, or county, where the same is not divided into wards, towns, townships, precincts, or election districts, which is deficient in its quota, is situated, shall, under the direction of the provost-marshal-general, make a draft for the number deficient therefrom; but all volunteers who may enlist after the draft shall have been ordered, and before it shall be actually made, shall be deducted from the number ordered to be drafted in such ward, town, township, precinct, or election district, or county. And if the quota of any district shall not be filled by the draft made in accordance with the provisions of this act, and the act to which it is an amendment, further drafts shall be made, and like proceedings had, until the quota of such district shall be filled.

SEC. 4. *And be it further enacted*, That any person enrolled under the provisions of the act for enrolling and calling out the national forces, and for other purposes, approved March third, eighteen hundred and sixty-three, or who may be hereafter so enrolled, may

furnish, at any time previous to the draft, an acceptable substitute, who is not liable to draft, nor at the time in the military or naval service of the United States, and such person so furnishing a substitute shall be exempt from draft during the time for which (such) substitute shall not be liable to draft, not exceeding the time for which such substitute shall have been accepted.

SEC. 6. *And be it further enacted*, That boards of enrolment shall enroll all persons liable to draft under the provisions of this act and the act to which this is an amendment whose names may have been omitted by the proper enrolling officers; all persons who shall arrive at the age of twenty years before the draft; all aliens who shall declare their intentions to become citizens; all persons discharged from the military or naval service of the United States who have not been in such service two years during the present war; and all persons who have been exempted under the provisions of the second section of the act to which this is an amendment, but who are not exempted by the provisions of this act; and said boards of enrolment shall release and discharge from draft all persons who, between the time of enrolment and the draft, shall have arrived at the age of forty-five years, and shall strike the names of such persons from the enrolment.

SEC. 11. *And be it further enacted*, That section third of the "act for enrolling and calling out the national forces, and for other purposes," approved March third, eighteen hundred and sixty-three, and so much of section ten of said act as provides for the separate enrolment of each class, be, and the same are hereby, repealed; and it shall be the duty of the board of enrolment of each district to consolidate the two classes mentioned in the third section of said act.

SEC. 24. *And be it further enacted*, That all able-bodied male colored persons, between the ages of twenty and forty-five years, resident in the United States, shall be enrolled according to the provisions of this act, and of the act to which this is an amendment, and form part of the national forces; and when a slave of a loyal master shall be drafted and mustered into the service of the United States, his master shall have a certificate thereof, and thereupon such slave shall be free; and the bounty of one hundred dollars, now payable by law for each drafted man, shall be paid to the person to whom such drafted person was owing service or labor at the time of his muster into the service of the United States. The Secretary of War shall appoint a commission in each of the slave States represented in Congress, charged to award to each loyal person to whom a colored volunteer may owe service a just compensation, not exceeding three hundred dollars, for each such colored volunteer, payable out of the fund derived from commutations, and every such colored volunteer on being mustered into the service shall be free. And in all cases where men of color have been heretofore enlisted or have volunteered in the military service of the United States, all the provisions of this act, so far as the payment of bounty and compensation are provided, shall be equally applicable as to those who may be hereafter recruited. But men of color, drafted or enlisted, or who may volunteer into the military service, while they shall be credited on the quotas of the several States, or subdivisions of States, wherein they are respectively drafted, enlisted, or shall volunteer, shall not be assigned as State troops, but shall be mustered into regiments or companies as United States colored troops.

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SEC. 27. *And be it further enacted*, That so much of the act entitled "An act for enrolling and calling out the national forces, and for other purposes," approved March third, eighteen hundred and sixty-three, as may be inconsistent with the provisions of this act, is hereby repealed.

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13 Stat., 80. Approved May 20, 1864. Chapter 92.

AN ACT to organize a regiment of Veteran Volunteer Engineers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized to enlist, out of any volunteer forces in the army of the Cumberland that have served or are now serving as pioneers, pontoniers, or engineers, to serve wherever required for three years, or during the war, to consist of ten companies, and to have the same organization, pay, and emoluments as are allowed to engineer soldiers under the provisions of the fourth section of an act entitled "An act providing for the better organization of the military establishment," approved August third, eighteen hundred and sixty-one.

SEC. 2. *And be it further enacted*, That the officers of the engineers authorized to be raised under the provisions of the foregoing section shall be appointed and commissioned by the President of the United States, on the recommendation of the commander of the army of the Cumberland, and shall receive the same pay and allowances as engineer officers of similar grade in the regular army.

13 Stat., 379. Approved July 4, 1864. Chapter 237.

AN ACT further to regulate and provide for the enrolling and calling out the national forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States may, at his discretion, at any time hereafter call for any number of men as volunteers for the respective terms of one, two, and three years for military service; and any such volunteer, or, in case of draft, as hereinafter provided, any substitute, shall be credited to the town, township, ward of a city, precinct, or election district, or of a county not so subdivided, toward the quota of which he may have volunteered or engaged as a substitute; * * *

SEC. 2. *And be it further enacted*, That in case the quota, or any part thereof, of any town, township, ward of a city, precinct, or election district, or of any county not so subdivided, shall not be filled within the space of fifty days after such call, then the President shall immediately order a draft for one year to fill such quota, or any part thereof, which may be unfilled; and in case of any such draft no payment of money shall be accepted or received by the Government as commutation to release any enrolled or drafted man from personal obligation to perform military service.

SEC. 3. *And be it further enacted*, That it shall be lawful for the executive of any of the States to send recruiting agents into any of the States declared to be in rebellion, except the States of Arkansas, Tennessee, and Louisiana, to recruit volunteers under any call under the provisions of this act, who shall be credited to the State, and to the respective subdivisions thereof, which may procure the enlistment.

SEC. 4. *And be it further enacted*, That drafted men, substitutes, and volunteers, when mustered in, shall be organized in, or assigned to, regiments, batteries, or other organizations of their own States, and, as far as practicable, shall, when assigned, be permitted to select their own regiments, batteries, or other organizations from among those of their respective States which at the time of assignment may not be filled to their maximum number.

SEC. 6. *And be it further enacted*, That section three of an act entitled "An act to amend an act entitled 'An act for enrolling and calling out the national forces, and for other purposes,'" approved February twenty-four, eighteen hundred and sixty-four, be, and the same is hereby, amended, so as to authorize and direct district provost-marshals, under the direction of the provost-marshal-general, to make a draft for one hundred per centum in addition to the number required to fill the quota of any district as provided by said section.

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13 Stat., 487. Approved March 3, 1865. Chapter 79.

AN ACT to amend the several acts heretofore passed to provide for the enrolling and calling out the national forces, and for other purposes.

SEC. 6. *And be it further enacted*, That the President is hereby authorized to enlist or organize, out of troops already in the service, six regiments of volunteer engineers, to be organized in accordance with existing laws, to have the same pay and allowances of engineer troops of the Regular Army, and to be subjected to the rules and articles of war.

SEC. 7. *And be it further enacted*, That the President is hereby authorized to enlist two additional companies to be added to the regiment of volunteer engineers

raised under the provisions of an act approved May twentieth, eighteen hundred and sixty-four, entitled "An act to organize a regiment of veteran volunteers," and said regiment shall be considered one of the regiments authorized in the preceding section of this act.

SEC. 13. *And be it further enacted*, That where any revised enrolment in any Congressional or draft district has been obtained or made prior to any actual drawing of names from the enrolment lists, the quota of such district may be adjusted and apportioned to such revised enrolment instead of being applied to or based upon the enrolment as it may have stood before the revision.

SEC. 14. *And be it further enacted*, That hereafter all persons mustered in (to) the military or naval service, whether as volunteers, substitutes, representatives, or otherwise, shall be credited to the State and to the ward, township, precinct, or other enrolment subdistrict where such persons belong by actual residence (if such persons have an actual residence within the United States), and where such persons were or shall be enrolled (if liable to enrolment). * * * *Provided*, That in any call for troops hereafter no county, town, township, ward, precinct, or election district shall have credit except for men actually furnished on said call or the preceding call by said county, town, township, ward, precinct, or election district, and mustered into the military or naval service on the quota thereof.

SEC. 15. *And be it further enacted*, That in computing quotas hereafter credit shall be given to the several States, districts, and subdistricts for all men furnished from them, respectively, and not heretofore credited, during the present rebellion, for any period of service of not less than three months, calculating the number

of days for which such service was furnished, and reducing the same to years: *Provided*, That such credits shall not be applied to the call for additional troops made by the President on the twenty-first day of December, eighteen hundred and sixty-four.

SEC. 22. *And be it further enacted*, That the third section of the act entitled "An act (further) to regulate and provide for the enrolling and calling out the national forces, and for other purposes," approved July fourth, eighteen hundred and sixty-four, be, and the same is hereby, repealed.

SEC 27. *And be it further enacted*, That this act shall take effect from and after its passage: *Provided*, That nothing herein contained shall operate to postpone the pending draft or interfere with the quotas assigned therefor.

CALLS FOR TROOPS AND ASSIGNMENT OF STATE QUOTAS.

Calls for troops were made during the civil war period under the proclamation of May 3, 1861, for 42,034 men for three years, and under the acts of July 22 and 25, 1861, for 500,000 men for one, two, and three years, and under the draft acts by proclamations of October 17, 1863, and February 1, March 14, July 18, and December 19, 1864, for an aggregate of 1,500,000 men for service for one, two, and three years. A single proclamation, with assignment of State quotas thereunder, will illustrate the administrative methods pursued.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Whereas by the act approved July 4, 1864, entitled "An act further to regulate and provide for the enroll-

ing and calling out the national forces, and for other purposes," it is provided that the President of the United States may, "at his discretion, at any time hereafter, call for any number of men as volunteers, for the respective terms of one, two, and three years, for military services," and "that in case the quota of (or) any part thereof, of any town, township, ward of a city, precinct, or election district, or of a county not so subdivided, shall not be filled within the space of fifty days after such call, then the President shall immediately order a draft for one year to fill such quota, or any part thereof, which may be unfilled;"

And whereas the new enrollment heretofore ordered is so far completed as that the aforementioned act of Congress may now be put in operation for recruiting and keeping up the strength of the armies in the field, for garrisons, and such military operations as may be required for the purpose of suppressing the rebellion and restoring the authority of the United States Government in the insurgent States:

Now, therefore, I, Abraham Lincoln, President of the United States, do issue this my call for 500,000 volunteers for the military service; provided, nevertheless, that this call shall be reduced by all credits which may be established under section eight of the aforesaid act, on account of persons who have entered the naval service during the present rebellion, and by credits for men furnished to the military service in excess of calls heretofore made.

Volunteers will be accepted under this call for one, two, or three years, as they may elect, and will be entitled to the bounty provided by the law for the period of service for which they enlist.

And I hereby proclaim, order, and direct that, immediately after the fifth day of September, 1864,

being fifty days from the date of this call, a draft for troops to serve for one year shall be had in every town, township, ward of a city, precinct, or election district, or county not so subdivided, to fill the quota which shall be assigned to it under this call, or any part thereof which may be unfilled by volunteers on the said fifth day of September, 1864.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[L. S.] ABRAHAM LINCOLN.

By the President:

WILLIAM H. SEWARD,
Secretary of State.

The quotas under this call were as follows:

Maine	11,690	District of Columbia	2,910
New Hampshire	6,502	Kentucky	23,503
Vermont	5,156	Ohio	50,792
Massachusetts	21,670	Indiana	35,732
Rhode Island	3,197	Illinois	52,057
Connecticut	10,121	Missouri	26,678
New York	89,318	Michigan	18,282
New Jersey	15,891	Iowa	15,784
Pennsylvania	61,700	Wisconsin	19,032
Delaware	2,445	Minnesota	5,561
Maryland	12,328	Kansas	3,725
West Virginia	5,928		

The following Army regulation and general orders of the War Department, supplementary to the legislation above set forth, illustrate still further the charac-

teristics of the volunteer armies raised under said acts as State troops:

General Orders, No. 18. } HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, *Washington, February 21, 1862.*

The following orders have been received from the War Department:

1. The governors of States are legally the authorities for raising volunteer regiments and commissioning their officers. Accordingly, no independent organizations, as such, will be hereafter recognized in the United States service. Copies of the rolls of muster into service will be sent as soon as practicable to the governors of the States to which they belong by the commanders of all brigades, regiments, or corps heretofore recognized as independent of State organizations; and all vacancies of commissions in such regiments and corps will be hereafter filled by the respective governors according to law. Wherever a regiment is composed of companies from different States, it will be considered as belonging to the State from which the greatest number of companies was furnished for that regiment.

* * * * *

By command of Major-General McClellan.

L. THOMAS, *Adjutant-General.*

General Orders, No. 23. } HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, *Washington, March 3, 1862.*

* * * * *

2. By direction of the Secretary of War the following addition is made to paragraph 9, page 10, Revised

Regulations for the Army: Except commissions issued by the President to officers of volunteer regiments, which will be considered the same as if issued by the governors of States.

* * * * *

By command of Major-General McClellan:

L. THOMAS,
Adjutant General.

General Orders, No. 75. } HEADQUARTERS OF THE ARMY, ADJUTANT-GENERAL'S OFFICE, *Washington, July 8, 1862.*

1. In organizing new regiments of volunteers the governors of States are hereby authorized to appoint, in addition to the staff officers heretofore authorized, one second lieutenant for each company, who shall be mustered into the service at the commencement of the organization, who shall have authority to muster in recruits as they are enlisted. * * *

2. Officers will be mustered into the service only on the authority of the governor of the State to which their regiments belong.

3. Until regiments are organized and their muster rolls completed they will be under the exclusive control of the governors of the States, and all requisitions for quartermaster, medical, and ordnance stores, and contracts for subsistence, will, if approved by them, be allowed, and not otherwise.

4. Where it is desired by the governors of States, the United States officers of the Quartermaster, Medical, and Ordnance departments may turn over stores to the State authorities, to be issued by them in accordance with the regulations, and accounted for to the proper bureau of the War Department.

5. Persons travelling under the order of the governor of a State on business connected with the recruiting service will be allowed the actual cost of transportation, to be paid by the mustering and disbursing officer on presentation of the account, accompanied by proper vouchers and the order under which the journey was performed.

By order of the Secretary of War:

L. THOMAS,
Adjutant-General.

APPENDIX 2.

SPANISH WAR.

30 Stat., 361. Approved April 22, 1898. Chapter 187.

AN ACT to provide for temporarily increasing the military establishment of the United States in time of war, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States under and in pursuance of the laws thereof, between the ages of eighteen and forty-five years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States.

SEC. 2. That the organized and active land forces of the United States shall consist of the Army of the United States and of the militia of the several States when called into the service of the United States: *Provided*, That in time of war the Army shall consist of two branches, which shall be designated, respectively, as the Regular Army and the Volunteer Army of the United States.

SEC. 3. That the Regular Army is the permanent military establishment, which is maintained both in peace and war according to law.

SEC. 4. That the Volunteer Army shall be maintained only during the existence of war, or while war

is imminent, and shall be raised and organized, as in this act provided, only after Congress has or shall have authorized the President to raise such a force or to call into the actual service of the United States the militia of the several States: *Provided*, That all enlistments for the Volunteer Army shall be for a term of two years, unless sooner terminated, and that all officers and men composing said army shall be discharged from the service of the United States when the purposes for which they were called into service shall have been accomplished, or on the conclusion of hostilities.

SEC. 5. That when it becomes necessary to raise a volunteer army the President shall issue his proclamation stating the number of men desired, within such limits as may be fixed by law, and the Secretary of War shall prescribe such rules and regulations, not inconsistent with the terms of this act, as may in his judgment be necessary for the purpose of examining, organizing, and receiving into service the men called for: *Provided*, That all men received into service in the Volunteer Army shall, as far as practicable, be taken from the several States and Territories and the District of Columbia and the Indian Territory in proportion to their population. And any company, troop, battalion, or regiment from the Indian Territory shall be formed and organized under such rules and regulations as shall be prescribed by the Secretary of War.

SEC. 6. That the Volunteer Army and the militia of the States when called into the service of the United States shall be organized under, and shall be subject to, the laws, orders, and regulations governing the Regular Army: *Provided*, That each regiment of the Volunteer Army shall have one surgeon, two assistant surgeons, and one chaplain, and that all the regimental

and company officers shall be appointed by the governors of the States in which their respective organizations are raised: *Provided further*, That when the members of any company, troop, battery, battalion, or regiment of the organized militia of any State shall enlist in the Volunteer Army in a body, as such company, troop, battery, battalion, or regiment, the regimental, company, troop, battery, and battalion officers in service with the militia organization thus enlisting may be appointed by the governors of the States and Territories, and shall, when so appointed, be officers of corresponding grades in the same organization when it shall have been received into the service of the United States as a part of the Volunteer Army: *Provided further*, That the President may authorize the Secretary of War to organize companies, troops, battalions, or regiments, possessing special qualifications, from the nation at large, not to exceed three thousand men, under such rules and regulations, including the appointment of the officers thereof, as may be prescribed by the Secretary of War.

SEC. 7. That all organizations of the Volunteer Army shall be so recruited from time to time as to maintain them as near to their maximum strength as the President may deem necessary, and no new organization shall be accepted into service from any State unless the organizations already in service from such State are as near to their maximum strength of officers and enlisted men as the President may deem necessary.

SEC. 8. That all returns and muster rolls of organizations of the Volunteer Army and of militia organizations while in the service of the United States shall be rendered to the Adjutant-General of the Army, and upon the disbandment of such organizations the records

pertaining to them shall be transferred to and filed in the Record and Pension Office of the War Department. And regimental and all other medical officers serving with volunteer troops in the field or elsewhere shall keep a daily record of all soldiers reported sick or wounded, as shown by the morning calls or reports, and shall deposit such reports, with other reports provided for in this section, with the Record and Pension Office, as provided herein for other reports, returns, and muster rolls.

SEC. 9. That in time of war, or when war is imminent, the troops in the service of the United States, whether belonging to the Regular or Volunteer Army or to the militia, shall be organized, as far as practicable, into divisons of three brigades, each brigade to be composed of three or more regiments; and whenever three or more divisions are assembled in the same army the President is authorized to organize them into army corps, each corps to consist of not more than three divisions.

SEC. 10. That the staff of the commander of an army corps shall consist of one assistant adjutant-general, one chief engineer, one inspector-general, one chief quartermaster, one chief commissary of subsistence, one judge-advocate, and one chief surgeon, who shall have, respectively, the rank of lieutenant-colonel; one assistant adjutant-general, who shall have the rank of captain, and the aids-de-camp authorized by law. The staff of the commander of a division shall consist of one assistant-adjutant-general, one engineer officer, one inspector-general, one chief quartermaster, one chief commissary of subsistance, and one chief surgeon, who shall have, respectively, the rank of major, and the aids-de-camp authorized by law. The

staff of the commander of a brigade shall consist of one assistant adjutant-general, one assistant quartermaster, and one commissary of subsistence, each with the rank of captain, one surgeon, and the aids-de-camp authorized by law. The staff officers herein authorized for the corps, division, and brigade commanders may be appointed by the President, by and with the advice and consent of the Senate, as officers of the Volunteer Army, or may be assigned by him, in his discretion, from officers of the Regular Army or the Volunteer Army, or of the militia in the service of the United States: *Provided*, That when relieved from such staff service, said appointments or assignments shall terminate.

SEC. 11. That the President is hereby authorized to appoint in the Volunteer Army, by and with the advice and consent of the Senate, not exceeding one major-general for each organized army corps and division, and one brigadier-general for each brigade, and any officer so selected and appointed from the Regular Army shall be entitled to retain his rank therein: *Provided*, That each general officer of the Volunteer Army shall be entitled to the number of aids-de-camp authorized for an officer of like grade in the Regular Army.

SEC. 12. That all officers and enlisted men of the Volunteer Army, and of the militia of the States when in the service of the United States, shall be in all respects on the same footing as to pay, allowances, and pensions as that of officers and enlisted men of corresponding grades in the Regular Army.

SEC. 13. That the governor of any State or Territory may, with the consent of the President, appoint officers of the Regular Army in the grades of field

officers in organizations of the Volunteer Army, and officers thus appointed shall be entitled to retain their rank in the Regular Army: *Provided*, That not more than one officer of the Regular Army shall hold a commission in any one regiment of the Volunteer Army at the same time.

SEC. 14. That the general commanding a separate department or a detached army is authorized to appoint from time to time military boards of not less than three nor more than five volunteer officers of the Volunteer Army to examine into the capacity, qualifications, conduct, and efficiency of any commissioned officer of said army within his command: *Provided*, That each member of the board shall be superior in rank to the officer whose qualifications are to be inquired into: *And provided further*, That if the report of such a board is adverse to the continuance of any officer, and the report be approved by the President, such officer shall be discharged from service in the Volunteer Army, at the discretion of the President, with one month's pay and allowances.

SEC. 15. That all acts and parts of acts inconsistent with the provisions hereof be, and the same are hereby, repealed.

WAR DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, June 27, 1898.

To the ADJUTANT-GENERAL.

SIR: My attention has been called to paragraph 2 of Special Orders, No. 52, Headquarters Department of the Gulf, declaring the proceedings of a court-martial in the case of Private James A. Scott, South Carolina Volunteer Artillery, illegal and the sentence null and

void, for the reason that a Regular Army officer was a member of the court.

I have recently had occasion to express my views to a different effect, and copy my remarks here:

"I suppose this is referred to me for an expression of my views as to whether, under existing laws, general courts-martial can be composed of both regulars and volunteers for the trial of either regulars or volunteers.

"The seventy-seventh article of war prescribes that 'officers of the Regular Army shall not be competent to sit on courts-martials to try officers or soldiers of other forces, except as provided in article 78.' Article 78 relates to the Regular Army and the Marines serving together. It would thus seem that the Marines would come under the head of 'other forces'—in regard to whom, however, an exception is made.

It was also held by this office that the volunteers of the war of the rebellion were 'other forces,' within the meaning of article 77.[a]

"By the act temporarily increasing the military establishment, approved April 22, 1898, it is provided that in time of war the Army shall consist of two branches, which shall be designated, respectively, as the Regular Army and the Volunteer Army of the United States; that the Regular Army is the permanent military establishment, which is maintained both in peace and war, and that the Volunteer Army shall be maintained only during the existence of war or while war is imminent.

"The question is whether this Volunteer Army comes under the head of 'other forces,' as the term is used in

[a] This statement is erroneous. Article 77 was not enacted until 1874, nine years after the close of the war of the rebellion. There could not, therefore, have been any such ruling.

the seventy-seventh article. It might, perhaps, be held either way without a stretch of construction. The Regular Army and the Volunteer Army are made 'branches' of the same Army, and yet one is a permanent and the other a temporary force; so that they are in one respect of the same forces and in another respect of different forces; but I am of the opinion that, under the language of the present legislation, the restriction does not apply. The present Volunteer Army is an entirely different system from that of the war of the rebellion, and what was held in regard to the latter in this respect would not seem now to apply; nor does it seem to come within the original reason for the legislation which was to secure the State troops trial by their own officers. I am not, indeed, convinced of the correctness of the ruling that the Volunteer Army of the war of the rebellion was within the meaning of 'other forces.'"

If these views should be concurred in, I respectfully suggest that it be announced in decision circular that as the act "to provide for temporarily increasing the military establishment in the United States in time of war," approved April 22, 1898, declares that the Army of the United States, in time of war, shall consist of both the Regular Army and the Volunteer Army, it can not be held that the Volunteer Army is, with reference to the Regular Army, "other forces," within the meaning of the seventy-seventh article of war, but that regular officers may now sit on courts-martial for the trial of volunteer officers or soldiers.

Very respectfully,

G. NORMAN LIEBER,
Judge-Advocate-General.

Circular, No 21.

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 30, 1898.

1. The following decision has been made and is published to the Army for the information of all concerned:

Detail of officers of the Regular Army on courts-martial for the trial of volunteers: As the act "to provide for the temporarily increasing the military establishment of the United States in time of war," approved April 22, 1898, declares that the Army of the United States, in time of war, shall consist of both the Regular Army and the Volunteer Army, it can not be held that the Volunteer Army is, with reference to the Regular Army, "other forces," within the meaning of the seventy-seventh article of war, but regular officers may now sit on courts-martial for the trial of volunteer officers or soldiers.

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By command of Major-General Miles:

H. C. CORBIN,
Adjutant-General.

APPENDIX 3.

INVALID CORPS, VETERAN RESERVE CORPS, VETERAN VOLUNTEERS, AND UNITED STATES COLORED TROOPS.

The Invalid Corps, afterwards known as the Veteran Reserve Corps, was raised under the following War Department orders:

General Orders, No. 105.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, April 28, 1863.

The organization of an invalid corps is hereby authorized.

This corps shall consist of companies, and, if it shall hereafter be thought best, of battalions.

The companies shall be made up from the following sources, viz:

First. By taking those officers and enlisted men of commands now in the field (whether actually present or temporarily absent) who, from wounds received in action or disease contracted in the line of duty, are unfit for field service, but are still capable of effective garrison duty, or such other light duty as may be required of an invalid corps. Regimental commanders shall at once make out from information received from their medical and company officers, and from their own knowledge, rolls (according to the form furnished) of the names of all the officers and enlisted men under their commands who fulfill the following conditions, viz:

1. That they are unfit for active field service on account of wounds or disease contracted in the line of

duty; this fact being certified by a medical officer in the service, after personal examination.

2. That they are fit for garrison duty; this fact being likewise certified by the medical officer, as above, after personal examination.

3. That they are, in the opinion of their commanding officers, meritorious and deserving.

These rolls shall be certified by the examining surgeon and regimental commander, and transmitted, through the regular channels of military correspondence, to the Provost-Marshal-General of the United States.

The regimental commander shall enter into the column of remarks, opposite each officer's name on the roll, a statement as to the general character of the officer for intelligence, industry, sobriety, and attention to duty; and all intermediate commanders shall indorse thereon such facts as they may possess in the case, or, if they have none, they shall state how far they are willing to indorse the opinion of the officer or officers making the recommendation. Similar rolls shall be forwarded, from time to time, whenever the number of men fulfilling the conditions enumerated or the exigencies of the service may render it expedient.

Second. By taking those officers and enlisted men still in service and borne on the rolls, but who are absent from duty, in hospitals or convalescent camps, or are otherwise under the control of medical officers. In these cases the medical officer in attendance shall prepare the rolls according to form, entering the names of officers and men from the same regiment on a roll by themselves, and send them, with the certificate of the surgeon, duly signed, to the proper regimental commander, who will forward them, as heretofore specified, subject to the same conditions and

requirements. If, in any case, the regimental commander shall think an officer unfit, in point of character, to continue in the service of the Invalid Corps, though disabled and certified by the surgeon, he will state his objection in the column of remarks and note the exception before signing the certificate. If any officer or enlisted man now in service, but absent and beyond the reach of a medical officer in charge of a hospital or convalescent camp, desires to enter this corps, he will take the course indicated below for those who have been honorably discharged the service.

Third. By accepting those officers and enlisted men who have been honorably discharged on account of wounds or disease contracted in the line of duty, and who desire to reenter the service. In the case of an officer, application for appointment must be made to the provost-marshal-general of the United States through the officer detailed as acting assistant provost-marshal-general of the State. No application of this kind will be considered unless the following conditions are completely fulfilled:

1. That the applicant produce the certificate of the surgeon of the board of enrollment for the district in which he resides that he is unfit for active field duty on account of wounds or disease, and is not liable to draft, but is fit for garrison duty.

2. That he furnish evidence of honorable discharge on account of wounds or disability contracted in the line of duty.

3. That he produce recommendations from the regimental, brigade, and division commanders under whom he formerly served, that he is worthy of being thus provided for and capable of returning adequate service to the Government. In case it shall be impracticable

to get this last evidence, he may, having established the first two points above, satisfy the board of enrollment that he is deserving, and present its certificate of the fact. This evidence must all be obtained by the applicant, and must be transmitted with his application for appointment.

If there be no acting assistant provost-marshal-general for the State the application may be forwarded through the adjutant-general of the State, who is desired to indorse thereon such facts in the military history of the applicant as he may know, or as are afforded by his records, and forward the same to the provost-marshal-general of the United States. Enlisted men, honorably discharged on account of disability, desiring to reenlist in this corps will present themselves to the board of enrollment for the district in which they reside for examination by the surgeon thereof, who shall examine them and report the result to the board of enrollment.

The board shall then consider each case, and if the applicant is found to fulfill the conditions specified below the board shall give him a certificate to that effect, viz:

1. That he is unfit for service in the field.
2. That he is fit for garrison duty.
3. That he is meritorious and deserving.
4. That he was honorably discharged from the service.

The provost-marshal for the district shall then send the application with this certificate of the board to the acting assistant provost-marshal-general of the State, who shall procure such evidence of service and character as the records of the company to which he belonged, on file at the headquarters of the State, may show, and

if satisfied that it is a meritorious case and that the man is deserving he will enlist him in accordance with such special rules as the provost-marshal-general may establish.

Medical inspectors, surgeons in charge of hospitals, military commanders, and all others having authority to discharge, under existing laws and regulations, are forbidden to grant discharges to any men under their control who may be fit for service in the Invalid Corps.

The provost-marshal-general is charged with the execution of this order, and the troops organized under it will be under the control of his bureau.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

General Orders, No. 111.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 18, 1864.

The name of the organization authorized by General Orders, No. 105, War Department, 1863, as an "Invalid Corps," is hereby changed to that of "Veteran Reserve Corps." All orders relating to the Invalid Corps will remain in force, as at present, with respect to the Veteran Reserve Corps.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

The veteran volunteers, afterwards created an army corps, were organized under the following orders:

GENERAL ORDERS, No. 191.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, *Washington, June 25, 1863.*

FOR RECRUITING VETERAN VOLUNTEERS.

In order to increase the armies now in the field, volunteer infantry, cavalry, and artillery may be enlisted at any time within ninety days from this date, in the respective States, under the regulations hereinafter mentioned. The volunteers so enlisted, and such of the three years' troops now in the field as may reenlist in accordance with the provisions of this order, will constitute a force to be designated "Veteran Volunteers." The regulations for enlisting this force are as follows:

1. The period of service for the enlistments and reenlistments above mentioned shall be for three years or during the war.

2. All able-bodied men, between the ages of eighteen and forty-five years, who have heretofore been enlisted, and have served for not less than nine months, and can pass the examination required by the mustering regulations of the United States, may be enlisted under this order as Veteran Volunteers, in accordance with the provisions hereinafter set forth.

4. If the Government shall not require these troops for the full period of three years, and they shall be mustered honorably out of service before the expiration of their term of enlistment, they shall receive, upon being mustered out, the whole amount of bounty remaining unpaid, the same as if the full term had been served. The legal heirs of volunteers who die in service shall be entitled to receive the whole bounty remaining unpaid at the time of the soldier's death.

5. Veteran volunteers enlisted under this order will be permitted at their option to enter old regiments now in the field; but their service will continue for the full term of their own enlistment, notwithstanding the expiration of the term for which the regiment was originally enlisted. New organizations will be officered only by persons who have been in service, and have shown themselves properly qualified for command. As a badge of honorable distinction, "service chevrons" will be furnished by the War Department, to be worn by the veteran volunteers.

6. Officers of regiments whose terms have expired will be authorized, on proper application, and approval of their respective governors, to raise companies and regiments within the period of sixty days; and if the company or regiment authorized to be raised shall be filled up and mustered into service within the said period of sixty days, the officers may be recommissioned of the date of their original commissions, and for the time engaged in recruiting they will be entitled to receive the pay belonging to their rank.

7. Volunteers or militia now in service whose term of service will expire within ninety days, and who shall then have been in service at least nine months, shall be entitled to the aforesaid bounty and premium of $402, provided they reenlist before the expiration of their present term for three years or the war; and said bounty and premium shall be paid in the manner herein provided for other troops reentering the service. The new term will commence from date of reenlistment.

8. After the expiration of ninety days from this date, volunteers serving in three years' organizations, who may reenlist for three years or the war,

shall be entitled to the aforesaid bounty and premium of $402, to be paid in the manner herein provided for other troops reentering the service. The new term will commence from date of reenlistment.

9. Officers in service whose regiments or companies may reenlist, in accordance with the provisions of this order, before the expiration of their present term, shall have their commissions continued, so as to preserve their date of rank as fixed by their original muster into United States service.

10. As soon after the expiration of their original term of enlistment as the exigencies of the service will permit, a furlough of thirty days will be granted to men who may reenlist in accordance with the provisions of this order.

11. Volunteers enlisted under this order will be credited as three years' men in the quotas of their respective States. Instructions for the appointment of recruiting officers and for enlisting veteran volunteers will be immediately issued to the governors of States.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

General Orders, No. 287.

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, November 28, 1864.

ORDER FOR RAISING AND ORGANIZING A NEW VOLUNTEER ARMY CORPS.

1. That an army corps to consist of not less than twenty thousand infantry, and enlisted for not less than one year, to be designated the First Corps, shall

be organized in the District of Columbia, commencing the organization on the first day of December, 1864, and continuing until the first day of January next. The privates to consist only of able-bodied men who have served honorably not less than two years, and therefore not subject to draft; the officers to be commissioned from such as have honorably served not less than two years.

2. Recruits will be furnished transportation to Washington; will be credited to the district in which they or their families are domiciled; and will be paid a special bounty of three hundred dollars, from the substitute fund, upon being mustered into service. Each recruit who preserves his arms to the end of his term may retain them as his own, upon being honorably discharged from service.

3. Details of organization will be prescribed by the Adjutant-General. The heads of bureaus will detail competent officers for the prompt examination and organization, arming, equipping, and supplying the corps.

4. Major-General Hancock is assigned to the command of this corps, headquarters at Washington.

By order of the Secretary of War:

E. D. TOWNSEND,
Assistant Adjutant-General.

The United States colored troops were authorized by section 24 of the act of February 24, 1864, above set forth. (Appendix 1, p. 18.)